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AUTHORIZATION REQUEST FOR THE CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE

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HEARING

BEFORE THE

SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

ON

AUTHORIZATION REQUEST FOR THE CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE

APRIL 17, 1986

Serial No. 43

ORIGINAL

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

86-420 O WASHINGTON : 1986

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

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AUTHORIZATION REQUEST FOR CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE

THURSDAY, APRIL 17, 1986

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 2237, Rayburn House Office Building. Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Sensenbrenner, and Conyers.

Staff present: Catherine A. LeRoy, chief counsel; Stuart J. Ishimaru, assistant counsel; Alan Slobodin, associate counsel; and Deborah K. Ward, clerk.

Mr. EDWARDS. Today the subcommittee will consider the authorization request for the Civil Rights Division of the Department of Justice for fiscal 1987. The Civil Rights Division is requesting an authorization of $24,141,000 for 1987. This represents an increase of $1,331,000 over the 1986 anticipated appropriation, and a $2,312,000 increase over the 1986 funding level after the Gramm-Rudman-Hollings reduction has been factored in.

Over the course of President Reagan's administration, the activities of the Civil Rights Division have been the subject of great controversy. This subcommittee has held numerous oversight hearings on the Reagan civil rights record: employment discrimination, voting rights, school desegregation, fair housing, and the civil rights of institutionalized persons.

These hearings have clearly demonstrated the retreat on civil rights by this administration. Under the subterfuge of a "color blind society," the administration has attempted to bring our Nation back to an era where race and sex discrimination would again be acceptable, when the rights of minorities and women would no longer be assured by the Federal Government.

The lessons and hard-won civil rights battles of the last 30 years have taught us that passivity is not just acceptable. Discrimination continues to vex our Nation, a nation that is far from the color- and gender-blind vision laid out by this administration. As long as this remains the case, the Federal Government must continue to take a vigorous and active role in eliminating discrimination, root and branch. I look forward to discussing with Mr. Reynolds the activities of the Civil Rights Division this morning. I recognize the gentleman from Wisconsin, my good friend, Mr. Sensenbrenner.

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Mr. SENSENBRENNER. Before beginning, Mr. Chairman, I ask unanimous consent that the subcommittee permit coverage of this hearing in whole or in part by television broadcast, radio broadcast or still photography in accordance with Committee Rule 5.

Mr. EDWARDS. Thank you. Without objection, so ordered.

Mr. SENSENBRENNER. Now, Mr. Chairman, if the administration continues at its pace in 1986 to reform Executive Order 11246, it will be the year 2086 before a new executive order is signed. Executive Order 11246 is aimed at eliminating discrimination and assuring that contractors take affirmative action to eliminate discrimination. It is not intended to provide for equal results or proportional representation, but for equal opportunity and nondiscrimination. With the stroke of a pen, the President can free Federal contractors and their employees from the requirement of proportional representation, a doctrine odious to a free people, and eliminate the reverse discrimination inherent in a Government-imposed set of racial and gender numerical goals and timetables.

Instead, for 9 months this issue has been bandied about in the administration without apparent resolution. Practically a week doesn't go by without something appearing in the press about this department saying this, and that department saying that. Now if there is agreement on the fundamental concepts between the Departments of Labor and Justice, why does it take the administration so long to produce language that reflects a common policy? If there has not been agreement, hasn't the President resolved this very issue himself?

He has spoken about nondiscrimination in response to questions about the executive order at a recent press conference. He campaigned in both 1980 and 1984 on the principle that equal treatment and equality before the law are the "foundations on which a just and free society is built."

In the midst of this inertia on the executive order, the positions of the administration officials, Larry Speakes and Jack Svahn, seem to contradict each other on the issue of minority business setasides in the space of just 3 days. Is this a Tower of Babel approach on the civil rights policy? Either the administration believes in equal opportunity and nondiscrimination or it doesn't. If it does, it should act and it should act now. If it doesn't really believe in the principle of equal opportunity or nondiscrimination, it should stop paying lip service to it, making leaks to the press that do nothing but inflame passions on both sides of the issue and recognize that it is continuing a practice that Congress outlawed in 1964.

Thank you very much.

Mr. EDWARDS. Thank you, Mr. Sensenbrenner.

Our witness this morning is, as I mentioned, Assistant Attorney General William Bradford Reynolds, head of the Civil Rights Division. Mr. Reynolds has been a frequent witness before this subcommittee. Although our differences on policy are well-known, Mr. Reynolds has always been an eloquent and honest spokesman for the administration of its civil rights policies. We are very pleased, Mr. Reynolds, to have you join us this morning. We welcome you, and do you mind being sworn in? This is a new thing that we are doing in the Judiciary Committee. Does it bother you to be sworn in?

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Mr. REYNOLDS. It doesn't bother me. I'll tell the truth whether you swear me or not.

[Witness sworn.]

Mr. EDWARDS. Without objection your full statement will be made a part of the record, and you may proceed on your own time.

TESTIMONY OF WILLIAM BRADFORD REYNOLDS, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION

Mr. REYNOLDS. Thank you, Mr. Chairman. I would like to have the full testimony submitted, and then if I could take a few minutes to summarize it, I would be more than happy to answer any questions that the committee might have.

I guess I feel that I ought to preface my remarks simply my making the comment that this is the fifth time I have been up here on an authorization hearing. They always start on the same note with the comment that we have been retreating on civil rights and failing to enforce the law. When all of that rhetoric is said and done, at the end of each of the hearings and the facts are in the record which we put in the record, it seems invariably to be the case that the facts overwhelm the rhetoric, and is indeed the case that we have a rigorous and active enforcement effort that the Civil Rights Division has been conducting and will continue to be conducting.

I think that far from your suggestion that this administration somehow is pursuing a policy where, as you put it, race and sex discrimination is acceptable, the one thing that you can say about the policy of this administration, the hallmark of it, is that we do not find race or sex discrimination tolerable in any way, shape or form. Our position, obviously, is one of wholesale nondiscrimination. We don't think you can compromise that principle, and therefore we disagree with quotas, goals and timetables or other preferences that are indeed dependent on looking at people on the basis of their skin color or their gender or their ethnic background, and that is the survival of those kinds of techniques. They depend on that.

We say that is wrong. That is unlawful. That is immoral. The programs that are bottomed on that are ones that should not be endorsed by this Congress or by this country or by the court or by anybody else that believes in a color blind society. And until everybody embraces that particular policy, then I think that it is indeed fair to say, and I would agree with you, that it will be a long time before we do indeed see the ideal that we are searching for come to fruition.

With that preliminary introduction, let me, if I might, just summarize the features of a rather extensive piece of testimony that does indeed go through the record of the Civil Rights Division and its enforcement activities and all of the elements that are part of our responsibility. The request this year that we have submitted to Congress for the 1987 authorization will provide the Civil Rights Division with 404 positions, 424 full-time equivalent work years, and $24,141,000.

The resources that are requested will enable the Department to carry out its important civil rights mission and responsibilities

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with the same energy and effectiveness that we have had for the past 5 years. The levels of resources authorized by Congress during this administration has increased from a fiscal year 1982 level of 385 positions, 408 full-time equivalent work years, and $17,603,000 to last year's authorization of 404 positions, 424 work years and $21,829,000.

The current request, as you noted, Mr. Chairman, for fiscal year 1987 is essentially the same as 1986 with a slight increase in funding for uncontrollables. During this period of fiscal constraint and in order to mitigate the requirement for additional personnel resources, the Division has undertaken extensive efforts to improve the productivity of its existing staff. Therefore, notwithstanding a growing workload, the fiscal year 1987 request seeks no additional staffing, but continues to focus on increased productivity of its existing staff made possible largely through automation.

As part of these efforts but not specifically identified within the Division's budget, the Department is requesting $10 million, a part of which will be allocated to continue the Division's automation efforts. The authorization request for the general legal activities appropriation includes a separate request to develop a uniform office automation program within the litigating components. No doubt this project will offer the Civil Rights Division the opportunity to expand and modernize its growing automated systems support and thereby increase the productivity of its existing staff.

Especially during these times of fiscal constraint, efforts to improve the productivity of existing staff is one of the most prudent uses of the Government's limited resources.

Although this hearing is intended to focus on fiscal year 1987 resource requirements, I am aware of a major concern of the subcommittee on the impact of the Gramm-Rudman-Hollings Deficit Reduction Act for fiscal year 1986. As you are aware, the Gramm-Rudman-Hollings Act required the Department of Justice to reduce all of its programs by 4.3 percent. For the Civil Rights Division, this required a reduction of $981,000.

The Department has recently approved a two-prong approach to reducing expenditures, yet mitigating the impact of the Gramm-Rudman-Hollings Act on its civil rights enforcement efforts. First, the Division is reducing discretionary expenditures where possible. To reduce these discretionary expenditures, the Division has deferred hiring when possible, curtailed outside staff training, reduced travel expenditures, and encouraged the use of compensatory time in lieu of overtime, and also improved the utilization of pretrial consultants.

Second, the Department is currently seeking approval from the OMB to reprogram resources from other litigating programs within the general legal activities appropriation that is for the Civil Rights Division.

I am confident that the Department's approach will meet the fiscal considerations of Gramm-Rudman-Hollings, and still maintain an effective high priority civil rights enforcement program.

The fiscal year 1987 authorization request seeks sufficient resources to continue the outstanding civil rights enforcement efforts that is a hallmark of this administration. My testimony details

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some of the Division's more important recent accomplishments, and I will only undertake to summarize a few of them here.

In the area of appellate activity, we have a very active program which not only handles civil rights cases in which the Government is a party, but also seeks out and files friend-of-the-court briefs on significant civil rights issues under consideration in private litigation. Under the Reagan Administration, since 1981, the Civil Rights Division has filed as a party or as amicus, 168 briefs and other papers of substance in the Supreme Court and 265 in the Federal Circuit Courts of Appeals.

During the same period, the Supreme Court has rendered 52 decisions on the merits, 38 of which have been fully or partially consistent with the Division's arguments, representing a 73-percent success rate. Some of those cases are highlighted in my testimony, and I will mention here only that the Supreme Court now has under submission a number of cases dealing with this Division's enforcement activity, including three that involve the whole issue of quotas and other racially preferential relief as a permissible technique or device to use under the Constitution or the Civil Rights Act of 1964. I think we can safely anticipate a ruling on these important cases before the summer recess this year.

In the criminal civil rights enforcement area, the Division continues to be as active as it has been in the past several years in its aggressive investigation and prosecution of individuals who deprive persons of their civil rights in violation of the Federal Criminal Code. During the first 4 years of the Reagan administration, we brought 178 criminal civil rights prosecutions, which compares, just if I can note, to the 167 prosecutions brought under a prior administration.

From the end of January of 1985 through mid-March of 1986, that activity has increased further with the filing of 55 more cases. This is a prosecution rate which, if it continues as projected, will be even higher than that of the first 4 years. Our criminal section and the various U.S. Attorneys' offices receive about 10,000 criminal civil rights complaints per year. Approximately 3,000 of these complaints are investigated by the FBI on an annual basis. Our Criminal Section staff that deals with these cases consists of 26 prosecutors and 19 support staff.

Criminal prosecutions that result from this investigative effort fall into three general classifications: racial violence, police misconduct, and abuse of aliens and migrant workers. Our extraordinary efforts with respect to each of these types of cases has been described in my testimony, and it can be expected to continue for the coming year.

Let me just repeat what I said last year with regard to this enforcement effort; that the prosecution effort of this Division is one of the most vital law enforcement operations in our Government. There is no more significant function of Government than to track down and successfully prosecute those who willfully violate the basic constitutional protections guaranteed by our Nation's laws. The authorization we seek in fiscal year 1987 is essential to the continuation of this vital effort.

In public employment, title VII assigns exclusive litigation responsibility to eliminate discrimination by public employers to the

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Attorney General and this responsibility has been delegated to the Civil Rights Division.

The Division continues to look for, find and bring lawsuits against employers, primarily public employers, that discriminated on the basis of race, sex, religion, or national origin. Last year I noted that in the first 4 years of this administration, we filed such suits at a rate above that filed in prior administrations. From January 1981 through January 1985, we filed 49 such suits, or approximately 12 per year, as compared to 41 such filings, or 9.5 per year in the immediately preceding administration. In 1985, we did even better. We filed 20 new employment discrimination suits, and we believe in fiscal year 1987 under the authorization we have requested, that significant activity can continue.

The division also continues to demand as relief for any title VII violation an immediate halt to all discriminatory conduct, make whole relief for identifiable victims of the employer's unlawful discrimination, and affirmative action remedies in the traditional sense of that term—that is, affirmative outreach, recruitment and training programs designed to attract to the pool of qualified applicants increased numbers of minorities and women able to compete on merit for vacant positions.

Our achievements in obtaining such decrees are substantial. In calendar 1985, we obtained 14 consent decrees in 13 cases. Two of the decrees pertain to individual municipalities in one case, and also an important litigated decree in another case.

The highlights of our program during 1985 are outlined in my testimony, but I would like to point out one new effort that I think is worthy of special mention. That is our ongoing litigation program aimed at eliminating durational residency requirements by Cook County, IL towns for municipal employment, a device which operates to exclude nonresidents from application. Because the residents of those communities are all or substantially all white, the requirement of a durational residency unlawfully excludes virtually all black applicants from consideration.

We filed 12 such suits in Cook County, and in March we obtained a favorable appellate court ruling on this issue in the *Cicero* case. We have initiated an investigation of similar practices in another major metropolitan area.

With regard to our enforcement effort under the Voting Rights Act of 1965, as amended—that continues at the same vigorous pace, both through litigation and the administrative review of changes covered by section 5 of the act. The need to continue congressional authorization for this effort is apparent.

With this administration, the Division has participated in 82 new voting rights cases. Of those, 34 suits were initiated as plaintiff, in 16 we intervened from the plaintiff's side, and in 21 we were defendants. We also filed legal briefs as amicus curiae in 11 other cases. Of the 50 cases initiated as plaintiff or intervenor, 21 were brought to redress alleged violations of the amended section 2 of the act, which was to correct voting systems that resulted in discrimination.

In 10 others we intervened as plaintiffs to defend the constitutionality of section 2, and of the 21 defendant cases, 10 were brought by jurisdiction seeking declaratory judgments under sec-

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tion 5, and seven cases involved the bail-out provisions of the statute.

Contemporaneously with this impressive litigation effort has been an unparalleled level of review of voting changes submitted under section 5. Within the Voting Section there is a section 5 unit consisting of three attorney supervisors and 20 analysts. This unit not only reviews submitted changes but systematically canvasses our records and other available sources of information on the covered jurisdictions to assure that all voting changes about which we have some knowledge have been submitted for pre-clearance.

The resulting effort has been prodigous. In the first term of this administration, the unit reviewed 50,322 voting changes, and on behalf of the Attorney General, I objected to the implementation of 266 such changes. Changes, by the way, under the last administration, were at the 20,700 level, with objections of 249. This extraordinary pace has continued over the past year with the review of an additional 14,364 voting changes of which objections were interposed to 159. One hundred twenty-seven of those were related to annexation requests.

This brings to 64,686 the number of voting changes reviewed over the past 5 years in which we have entered 119 objections to various redistrictings that had the purpose or effect of discriminating against minority citizens. We have also deployed a total of 4,051 Federal observers to attend 51 elections in seven States to prevent or document instances of discrimination during the balloting process. This would include 307 observers in 11 Mississippi counties during the last presidential election.

In public education in recent years, the Division has not had the occasion to file a large number of new school desegregation cases. In major part, this is because some 30 years after the *Brown* decision, most school districts have either come into compliance voluntarily or have been engaged in litigation either by private parties or by the Government. A number of our active cases and investigations involve second-generation issues; for example, quality education for minority students, disparate facilities at predominantly minority schools, the illegal use of quotas in admitting students to certain programs or schools, and the use of standardized tests.

We have brought five suits as plaintiff, intervened in two and filed as amicus in another. Four additional suits have been authorized for filing, and we are currently involved in settlement discussions with the school officials. Our expectation is that we will be able to file our complaint and a consent decree simultaneously in each case. Several additional suits have been proposed and are being considered and we have 24 major investigations underway. Moreover, during the past year a substantial amount of resources have been devoted to defensive litigation, representing the Department of Education in cases filed against it by school districts.

On the remedial front, there are two points to be made. First we have succeeded in fashioning a constitutional blueprint for the desegregation of public schools that depends not on mandatory student assignments, but a combination of devices such as school closings, boundary adjustments and magnet school plans and incentives for voluntary transfers. Notwithstanding initial criticism, it now appears that this alternative formula has gained widespread

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acceptance by litigants and courts alike as a more effective desegregation technique.

In cities as diverse as Chicago and Bakersfield, plans conceived with the help of local educators are beginning to work. Enrollment losses have begun to decline. Educational quality has begun to improve, and positive desegregation results are being achieved.

We are encouraged by these developments and plan to continue and expand this effort, not to shrink from eliminating purposeful segregation, but to seek to achieve that national goal in the most sensitive and sensible possible way. Second, increased attention needs to be given to the process of an orderly restoration of operating authority to locally elected school officials once they have achieved compliance without standing desegregation court decrees. Where a plan has been in place for a number of years, and the vestiges of past segregation have been successfully removed, we believe, and the law requires, that the cases be closed and the decisional power restored to where it belongs.

Such was the recent approach of the Court of Appeals for the 4th Circuit in *Riddick* v. *Norfolk School Board*. The court ruled there that where a school system has succeeded in eradicating all vestiges of de jure discrimination, the school board and not the Federal courts will run the schools absent intentional racial discrimination. We expect to continue to counsel the courts consistent with this legal analysis through the 1986-87 period.

In the fair housing area: since November 1983 when I reorganized the unit responsible for enforcing the Fair Housing Act, our housing program has been a major priority of the Division. The new section established as part of that reordering of resources had already filed 41 Fair Housing Act suits. In fact, during the 1984 calendar year, the Division filed more Fair Housing Act cases than in any year since 1976. Also, eight other housing suits have been authorized but are not yet filed because we are engaged in presuit settlement discussions. During the same period, 24 housing suits have been resolved through the entry of consent decrees or court orders. Favorable action on the requested fiscal year 1987 authorization will allow this initiative to continue.

Our enforcement role with respect to the Civil Rights of Institutionalized Persons Act, CRIPA, continues to be an extremely active one. Our understanding of the statute has been explained to the subcommittee at some length at previous hearings, and as indicated then, we see no reasoned basis to change our interpretation or the present course of seeking voluntary correction of unlawful conditions of confinement under CRIPA, a course that coincides fully with the intent of Congress.

Specifically, we continue to believe that we can obtain more and higher quality relief, and can obtain it more quickly by identifying constitutionally defined conditions of confinement, and where possible, obtaining the voluntary commitment of the State or local government to adopt corrective programs. Litigation may well be necessary under this approach, but only after all reasonable and good faith efforts to negotiate a voluntary resolution of the problems have failed. In sum, voluntary remediation of constitutional deficiencies avoids costly adversarial litigation and immediately

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benefits those whose conditions of confinement we all agree require improvement as soon as possible.

I would add only that to date this administration has sent notice letters under CRIPA on 62 occasions. We have filed 9 suits to enforce the act, and 36 investigations are pending. We have obtained 8 consent decrees, and comprehensive voluntary remedial plans or measures in at least 20 other instances. We have, in short, a practical, vigorous and effective enforcement program under this statute.

Mr. Chairman, my testimony also sets forth the record of our Division with respect to the important regulatory activities under section 504, title VI and title IX in the existing executive orders and our considerable efforts to secure the rights of Native Americans. I need not repeat those here other than to say that we project such activities to continue under the requested authorization.

In conclusion, we seek to continue the authorization of the Civil Rights Division at current levels because the law enforcement program we have built is a vital and viable one. In each of the subject matter areas within our responsibility, Congress has expressed its legislative will that the promise of our Nation be shared by all without discrimination.

The facts show that we are carrying out the congressional design and carrying it out every bit as energetically and vigorously as in prior years if not more so, and it is important that this effort be continued.

I would be pleased to respond to any questions. Thank you very much.

[The statement of Mr. Reynolds follows:]

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Department of Justice

STATEMENT

OF

WILLIAM BRADFORD REYNOLDS
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE

THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

CIVIL RIGHTS AUTHORIZATION

ON

APRIL 17, 1986

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1987 Authorization Request

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today in support of the FY 1987 authorization request for the Civil Rights Division. This request will provide the Civil Rights Division 404 positions, 424 fulltime equivalent workyears and $24,141,000. The resources requested will enable the Department to carry out its important civil rights mission responsibilities. With your support and by comparison, the Division has been provided the following levels of resources during this Administration.

Funding History

Year	Positions	Workyears	Amount
1982	385	408	$17,603
1983	385	406	19,227
1984	399	416	20,700
1985	404	424	22,624
1986	404	424	21,829*
1987	404	424	24,141

* Reflects Gramm-Rudman-Hollings Deficit Reduction Act decrease of $981,000.

During this period of fiscal constraint and in order to mitigate the requirement for additional personnel resources, the Division has undertaken extensive efforts to improve the productivity of its existing staff. Therefore, notwithstanding

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a growing workload, the FY 1987 request seeks no additional staffing, but continues to focus on increased productivity of its existing staff made possible through automation.

As part of these efforts but not specifically identified within the Civil Rights Division's budget, the Department is requesting $10,000,000, a part of which will be allocated to continue the Division's automation efforts. The authorization request for the "General Legal Activities" appropriation includes a separate request to develop a uniform office automation program within the litigating components. No doubt this project will offer the Civil Rights Division the opportunity to expand and modernize its growing automated systems support and thereby increase the productivity of its existing staff.

Especially during these times of fiscal constraint, efforts to improve the productivity of existing staff is one of the most prudent uses of the government's limited resources.

Although this hearing is intended to focus on FY 1987 resource requirements, I know a major concern of the Subcommittee is the impact of the the Gramm-Rudman-Hollings Deficit Reduction Act (GRH) for FY 1986. As you are aware, the GRH required the Department of Justice to reduce all of its programs by 4.3 percent. For the Civil Rights Division, this required a reduction of $981,000.

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The Department has recently approved a two "prong" approach, to reducing expenditures, yet mitigating the impact of the GPH on its civil rights enforcement efforts. First, the Division is reducing discretionary expenditures wherever possible. To reduce discretionary expenditures, the Division has deferred hiring whenever possible, curtailed outside staff training, reduced travel expenditures, encouraged the use of compensatory time in lieu of overtime, and improved the utilization of pretrial consultants. Secondly, the Department is currently seeking approval from the Office of Management and Budget to reprogram resources from other litigating programs within the "General Legal Activities" appropriation to the Civil Rights Division.

I am confident that the Department's approach will meet the fiscal considerations of the GRH, yet still maintain an effective high-priority civil rights enforcement program.

The FY 1987 authorization request seeks sufficient resources to continue the outstanding civil rights enforcment efforts that is a hallmark of this Administration. Let me detail for the Subcommittee some of the Division's more important recent accomplishments.

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Appellate Activity

We have an active appellate program which not only handles civil rights cases in which the Government is a party, but also seeks out and files friend-of-the-court briefs on significant civil rights issues under consideration in private litigation. Under the Reagan Administration, since 1981, the Civil Rights Division has filed as a party or as amicus curiae 168 briefs and other papers of substance in the Supreme Court, 265 in the federal circuit courts of appeals. During the same period of time, the Supreme Court has rendered 52 merits decisions, of which 38 have been fully or partially consistent with the Division's arguments, representing a 73 percent success rate. In the courts of appeals, the Division has prevailed in 156 of 188 decisions on the merits, for an 83 percent success rate.

Before the Supreme Court, we have successfully argued that the Equal Protection Clause prohibits revoking a parent's child custody because the parent marries a person of a different race, Palmore v. Sidoti, 466 U.S. 429 (1984), 52 U.S.L.W. 4497 (April 25, 1984); that state courts in Mississippi must comply with Section 5 of the Voting Rights Act, Hathorn v. Lovorn, 457 U.S. 255 (1982); that employment discrimination by federal aid recipients based on handicap is prohibited under

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Section 504 of the Rehabilitation Act of 1973 even where the primary purpose of the federal aid is not to provide employment, Consolidated Rail Corp. v. Darrone, ___ U.S. ___ (1984), 52 U.S.L.W. 4301 (Feb. 28, 1984); that quotas or other racially preferential relief are not a permissible component of a Title VII remedial order, Firefighters Local Union No. 1784 v. Stotts, ___ U.S. ___ (1984), 52 U.S.L.W. 4767 (June 12, 1984); that student aid [BEOG] grants are federal financial assistance under Title IX of the Education Amendments of 1972 and thus subjects that portion of an higher education institution which receives such aid to the sex discrimination prohibitions of that statute, Grove City College v. Bell, ___ U.S. ___ (1984), 52 U.S.L.W. 4283 (Feb. 28, 1984); that a female associate of a law firm had stated an employment discrimination claim by alleging that consideration for partnership was a term or condition of employment, and that she had been denied equal consideration for partnership on the basis of her sex, Hishon v. King & Spalding, ___ U.S. ___ (1984), 52 U.S.L.W. 4627 (May 22, 1984).

The present Supreme Court term has been especially active for us -- a half dozen merits cases under submission, two scheduled for argument, and several cases pending at the petition or jurisdictional stage. There is no basis to project a decline in such significant cases and I urge that the authorization for this program be continued.

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Criminal Civil Rights Violations

The Division continues to be active in its aggressive investigation and prosecution of individuals who deprive persons of their civil rights in violation of the federal criminal code. During the first four years of the Reagan Administration we brought 178 criminal civil rights prosecutions, comparing favorably with the 167 prosecutions brought during the prior administration. From the end of January, 1985 through mid-March, 1986 this activity increased further with the filing of 55 more cases. This is a prosecution rate which, if it continues as projected, will be even higher than that of the first four years. Our Criminal Section and the various United States Attorneys' offices receive about 10,000 criminal civil rights complaints per year. Approximately 3,000 of these complaints are investigated by the FBI annually. Our Criminal Section staff consists of 26 prosecutors (including 4 supervisors) and 19 support staff.

Criminal prosecutions that result from this investigative effort fall into three general classifications: racial violence, police misconduct, and abuse of aliens and migrant workers.

This Administration has given particular emphasis to the prosecution of incidents of racial violence. In fact, we prosecuted more than one-and-a-half times as many racial violence cases from 1981-1985 than were prosecuted during the previous four years. As a result of our almost three-year investigation

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of unlawful Klan activities in the Western District of North Carolina, indictments were filed naming 21 defendants in two related cases on September 23, 1985 and January 7, 1986 (U.S. v. Suits, et al.; U.S. v. Earp, et al.) Twelve of those defendants have already been convicted or pled guilty to charges of intimidating white women and black men from associating with each other by burning crosses at their homes and firing guns into their dwellings. Two other cases recently charged four individuals, three adults and one juvenile, with burning the home of a black family who had moved into a white neighborhood in Philadelphia. All three adults have either pled guilty or been convicted, and trial of the juvenile is scheduled for April 16, 1986. (U.S. v. Stewart, et al.). The Division is also prosecuting a former member of the Aryan Nation hate group for his conduct in interfering with the housing rights of minorities in Kootenai County, Idaho (U.S. v. Gilbert).

In the area of police misconduct, we have given special attention to improving the federal investigative and prosecutive effort in Puerto Rico through the efforts of our Puerto Rican task force. Since its inception, our success rate in police cases in Puerto Rico has substantially improved. In four cases prosecuted during the last fiscal year six defendants were convicted or pled guilty. In addition, the sentences being imposed on defendants in police misconduct cases is becoming more substantial. Ten police officers, who had been convicted of

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perjury and of conspiring to obstruct justice in the investigation of the shooting deaths of two Puerto Rican independence advocates, were sentenced to prison terms, with five defendants receiving terms of 20 years or more. (U.S. v. Perez, et al. also known as Cerro Maravilla). Within the continental United States our efforts to curb police abuse have also continued. In New Jersey, after a complicated three-month trial, we convicted two New Jersey state troopers for both the death of a turnpike motorist who had been beaten by one trooper with a flashlight, and the troopers' efforts to conceal the crime. Attempts at local prosecution had previously been unsuccessful. (U.S. v. Messerlian, et al.)

Our prosecution of incidents of involuntary servitude and peonage has also been vigorous during this last year, and we have sought indictments for such violations in different contexts. We are currently preparing for trial in a case charging eight members of the House of Judah religious cult in Michigan with the alleged beating death of a 12 year old boy who had refused to work. (U.S v. Lewis, et al.) In Pittsburgh, Pennsylvania, three individuals were also recently convicted of forcing a carnival worker to assemble rides after chaining him and physically assaulting him. (U.S. v. Reisinger, et al.). In another case, many Indonesian citizens, who were victims of a conspiracy to bring aliens to Los Angeles illegally to do domestic work, have been granted restitution and return passage home as part of the sentences received by six of the defendants who were convicted or

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pled guilty in U.S. v. Mussry. The case came to trial this year after a pre-trial appeal by the government established that it was not necessary to demonstrate physical coercion to prove a violation of the involuntary servitude statutes.

I want to repeat my remarks of last year when I stated that the prosecution effort of this Division is one of the most vital law enforcement operations in our government. There is no more significant function of government than to track down and successfully prosecute those who willfully violate the basic constitutional protections guaranteed by our nation's laws. The authorization we seek for FY 1987 will continue to support this vital effort.

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Discrimination in Public Employment

Title VII assigns exclusive litigation responsibility to eliminate discrimination by public employers to the Attorney General. This responsibility has been delegated to the Civil Rights Division.

The Division continues to look for, find and bring lawsuits against employers (primarily public employers) that discriminated on the basis of race, sex, religion or national origin. Last year I noted that in the first four years of this administration, we filed such suits at a rate above that filed in prior administrations. From January 20, 1981 through January 19, 1985, we filed 49 such suits (or approximately 12 per year) as compared to 41 such filings (or 9.5 per year) in the immediately preceding four year period. In 1985, we did even better, filing twenty (20) new suits. The FY 1987 authorization will allow this significant activity to continue.

The Division continues to demand as relief for any Title VII violation (1) an immediate halt to all discriminatory conduct, (2) "make whole" relief for identifiable victims of the employer's unlawful discrimination, and (3) "affirmative

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action" remedies in the traditional sense of that term -- that is, affirmative outreach, recruitment and training programs designed to attract to the pool of qualified applicants increased numbers of minorities and women able to compete on merit for vacant positions. Our achievements in obtaining such decrees are substantial. In calendar 1985, we obtained fourteen consent decrees in thirteen cases (two of the decrees pertain to individual municipalities in one case), and an important litigated decree in another case.

Among the highlights of our litigation program since I appeared before you at this time last year are:

1. The entry of consent decrees in four (4) suits brought against agencies of a state based upon charges of race and sex discrimination -- decrees which together provide for approximately $1,900,000 in backpay to blacks and women harmed by the practices of those agencies; 1/

1/ United States v. Georgia Forestry Commission, C.A. No. C-84-1577(A), N.D. Ga.; decree entered 5/30/85; United States v. Georgia Department of Natural Resources, C.A. No. C-84-1576(a), N.D. Ga.; decree entered 5/30/85; United States v. Georgia Department of Public Safety, C.A. No. C-84-1575(A), N.D. Ga.; decree entered 5/30/85; United States v. Georgia Department of Transportation, C.A. No. C-84-1574(A), N.D. Ga.; decree entered 5/30/85.

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2. A litigated decision providing for backpay in an amount approaching $2,000,000 to approximately 9,000 women harmed by a state's temporary disability program which discriminated against pregnant workers; 2/

3. A consent decree changing a practice of only hiring men for certain correctional officer positions in a large municipal prison system, and awarding $950,000 in backpay and priority job offers to more than 230 victims of that prior practice. 3/

4. A litigation program aimed at eliminating durational residence requirements by Cook County, Illinois towns for municipal employment, a device which operates to exclude non-residents from application. Because the residents of those communities are all or substantially all white, the requirements unlawfully exclude virtually all black applicants from consideration. We have filed twelve such suits in Cook County, and

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2/ United States v. Rhode Island Employment Services, C.A. No. 83-0541, D. RI; order entered 9/6/85.

3/ United States v. Philadelphia Prisons, C.A. No. 85-4485, E.D. Pa.; decree entered 8/3/85.

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in March we obtained a favorable appellate ruling on this issue in the Cicero case. We have initiated an investigation of similar practices in another major metropolitan area.

5. On March 12, 1986 we filed and the court granted conditional approval to a consent decree in a case alleging systemic discrimination against American Indians. 4/ While there will be a fairness hearing before the court enters the decree, you should know that the decree calls for $750,000 in back pay and priority job offers to at least 225 American Indians and three non Indian women that we believe suffered from the defendant city's employment practices. We believe this decree provides the most thorough relief and the most back pay for American Indians in any employment discrimination case.

6. In December, 1985, the Department participated in the trial of the Birmingham Reverse Discrimination Employment Litigation, involving claims of discrimination on the basis of race and sex in various promotional positions in the City of Birmingham. Because

4/ United States v. City of Gallup, C.A. 83-1395-M, D.N.M.

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the Department was a signatory to a consent decree with the City of Birmingham, we were initially invited to intervene in these cases by the court. After extensive discovery, we determined that the City had engaged in what we believed to be a pattern and practice of discrimination and that these actions were not required by the consent decree. After a five-day trial, the court ruled in favor of the defendants, finding that the consent decree authorized the City to promote, on the basis of race, black candidates who were demonstrably less qualified than the competing white promotional candidates. Because we disagree both with the court's interpretation of the decree and its application of the decree to the facts of these cases to insulate the City's actions from liability, we have filed an appeal with the Court of Appeals for the Eleventh Circuit.

In addition to an expanding docket of new and unresolved cases, we continue to devote substantial resources to securing compliance with decrees previously obtained. In 1985, those efforts involved not only monitoring, but also trials in three

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cases in which decrees were previously entered, 5/ and extensive preparation for trial and settlement on the eve of trial in a fourth 6/ and a motion for supplemental relief filed in a fifth. 7/

During the year, decrees in four cases which were more than four years old were dissolved with our agreement. 8/ In each case, we concluded that the defendant has complied with the letter and spirit of the decree and that the objectives of the decree had been obtained. In one other case, the court entered an order agreed upon by the parties which deleted the hiring and promotion goals of a decree on the ground that their objectives had been attained and that they no longer served a useful purpose. 9/

5/ United States v. New Jersey, C.A. No. 77-2054, D.N.J.; United States v. Buffalo (F.D.), C.A. No. 1973-414, W.D. N.Y.; United States v. San Francisco, C.A. 77-2084, N.D. Cal.

6/ United States v. Nassau County (police dept.), C.A. No. 80-1054, E.D. N.Y.

7/ United States v. North Little Rock, C.A. No. LR-C-82-300, E.D. Ark.

8/ United States v. Crown Zellerbach, C.A. No. 77-30356, E.D. La.; United States v. Nashville-Davidson, C.A. No. 80-3155, M.D. Tenn.; United States v. Waukesha County, C.A. No. 80-C-140, E.D. Wisc.; United States v. Maryland Transportation Authority, C.A. No. H-81-1072, D. Md.

9/ United States v. San Diego, C.A. No. 76-1093, S.D. Cal.

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Perhaps the most important issues affecting our program since I appeared before you last April are awaiting final resolution in the courts. The Supreme Court has granted review, received briefs and heard oral argument in three cases raising the issue of preferences based on race and sex to persons who are not victims of discrimination. One of the cases involves a voluntary plan adopted and implemented by a public employer which we believe violates Fourteenth Amendment rights, 10/ and the other two cases involve court orders which we believe exceed the authority granted district courts under Sec. 706(g) of Title VII of the Civil Rights Act of 1964, as amended. 11/ You are, I believe, familiar with this Department's position on these issues which is set forth in our briefs filed in the Supreme Court, and my prior testimony before this Subcommittee. We expect guidance from the Supreme Court on these difficult and vital issues before the Court adjourns for its summer recess late in June or early in July.

10/ Wygant v. Jackson Board of Education, S.Ct. No. 84-1340.

11/ Local 28 of the Sheet Metal Workers v. Equal Employment Opportunity Commission, S.Ct. No. 84-1646; Local 93, Firefighters v. City of Cleveland, S.Ct No. 84-1999.

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Voting Rights

One of the Division's most active efforts continues to be the enforcement of the Voting Rights Act of 1965, as amended, both through litigation and administrative review of changes covered by Section 5 of the Act. The need to continue Congressional authorization for this effort is apparent.

Under this Administration, the Division has participated in 82 new voting rights cases. Of those, 34 suits were initiated as plaintiff, in 16 we intervened as plaintiff, in 21 we were defendants, and we filed legal briefs as amicus curiae in 11 more. Of the 50 cases initiated as plaintiff or intervenor 21 were brought to redress alleged violations of Section 2 of the Act (to correct voting systems that "result" in discrimination); in 10 others we intervened as plaintiff to defend the constitutionality of Section 2. Of the 21 defendant cases, 10 were brought by jurisdictions seeking declaratory judgments under Section 5 and 7 cases were bailout actions.

Contemporaneously with this impressive litigation effort has been an unparalleled level of review of voting changes submitted under Section 5. Within the Voting Section there is a Section 5 Unit consisting of 3 attorney supervisors and 20 analysts. This unit not only reviews submitted changes but systematically canvasses our records

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and other available sources of information on the covered jurisdictions to assure that all voting changes about which we have some knowledge have been submitted for preclearance. The resulting effort has been prodigous. In the first term of this Administration, the unit reviewed 50,322 voting changes and, on behalf of the Attorney General, I objected to the implementation of 266 such changes. 12/ (Changes reviewed under the last administration were 20,722; objections entered were 249.) This extraordinary pace has continued over the past year with the review of an additional 14,364 voting changes, of which objections were interposed to 159. (127 of the changes objected to were annexations.)

This brings to 64,686 the number of voting changes reviewed over the past five years. Many of these submissions are routine and require little time to review. Others, however, such as a large number of the 10,000 annexations and most of the 1,735 redistrictings, are exceedingly complex and require the most detailed kind of factual and legal analysis. We have entered 119 objections to various redistrictings that had the purpose or effect of discriminating against minority citizens.

12/ The expected decrease in the high tide of submissions experienced after the publication of the 1980 Census has not occurred. Since 1982 we have continued to receive changes for review at an average rate of 14,000 per year.

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In addition, we have deployed a total of 4,051 federal observers to attend 51 elections in 7 states to prevent or document any instances of discrimination during the balloting process. This includes 307 observers in 11 Mississippi counties during the last presidential election.

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Public Education

In recent years the Division has not had occasion to file a large number of new school desegregation cases. In major part this is because some 30 years after the Brown decision most school districts have either come into compliance voluntarily or have been engaged in litigation either by private parties or by the government. A number of our active cases and investigations involve second-generation issues - e.g., quality education for minority students, disparate facilities at predominantly minority schools, the illegal use of quotas in admitting students to certain programs or schools, and the use of standardized tests. We have brought five suits as plaintiff, intervened in two and filed as amicus in another. Four additional suits have been authorized for filing, and we are currently involved in settlement discussions with the school officials. Our expectation is that we will be able to file our complaint and a consent decree simultaneously in each case. Several additional suits have been proposed and are being considered and we have 24 major investigations underway. Moreover, during the past year a substantial amount of resources have been devoted to defensive litigation - representing the Department of Education in cases filed against it by school districts.

Our major enforcement effort at this stage is to complete the very significant litigation which is pending. We are, for example, engaged in discovery and/or litigation with three statewide systems of higher education, Mississippi, Alabama and Louisiana, involving a total of some 25 institutions. The Alabama case is currently in the remedial phase of the litigation. On another front, in the Charleston, South Carolina case, we expect to complete our discovery within approximately the next 120 days.

Recently, we completed a year long trial involving discrimination in both schools and housing in Yonkers, New York. The district court recently found against the Yonkers school and city officials and directed the defendants to submit a remedial plan. The parties are currently engaged in the remedial phase of this case and are presently conducting settlement negotiations in the hope of avoiding protracted litigation on a constitutionally acceptable remedial plan.

Since January 1, 1985, we have negotiated 27 consent decrees and negotiated agreements and have participated in several dozen court proceedings on various motions. We have court orders involving approximately 400 school districts which require monitoring of compliance reports. In short, the Educational Opportunities Section has an extremely active caseload.

There are two current issues that are significant and controversial. As you know, this Administration has taken the position in a number of cases that mandatory busing to achieve or maintain racial

balance in schools is neither an equitable nor efficacious remedy. We therefore offered alternative relief better calculated to achieve meaningful desegregation in an enhanced educational environment. To this end, we have fashioned a blueprint for constitutional compliance through combinations of devices such as school closings, boundary adjustments, magnet school magnet school plans, and incentives for voluntary transfer. Notwithstanding initial criticism, it now appears that this alternative formula has gained widespread acceptance by litigants and courts alike as a more effective desegregation technique. In cities as diverse as Chicago and Bakersfield, plans conceived with the help of local educators are beginning to work. Enrollment losses have begun to decline. Educational quality has begun to improve. And positive desegregation results are being achieved.

We are encouraged by these developments and plan to continue and expand this effort -- not to shrink from eliminating purposeful segregation, but to seek to achieve that national goal in the most sensitive and sensible possible way. For instance, in recent litigation involving the Hattiesburg, Mississippi, school system the district court approved a magnet plan proposed jointly by the United States and the school board over a mandatory assignment plan relying on busing. In approving the magnet plan the district court was persuaded by expert testimony that the magnet school plan held the promise of helping to stabilize the district's enrollment and providing enhanced educational opportunities for all students.

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The other current issue involves the literally hundreds of school districts that are operating under court-ordered desegregation plans. I believe that we need to develop a strategy to return operating authority to locally elected leaders as contemplated in the original court decrees. Where a plan has been in place for a number of years and the vestiges of past segregation have been successfully removed, we believe, and the law requires, that the cases be closed and the decisional power restored to where it belongs. Such was the approach of the Court of Appeals for the Fourth Circuit in Riddick v. Norfolk School Board, No. 84-1815 (February 6, 1986). The court ruled that judicial supervision and control over a school system that had been in total compliance with desegregation orders for years should finally come to an end. Where a school system has "succeeded in eradicating all vestiges of de jure discrimination," the court properly held, "The school boards and not the federal courts will run the schools" absent intentional racial discrimination.

Obviously, each case must be judged on its own merits. Where there have been recent acts of discrimination, or where full, good faith compliance with the decree cannot be demonstrated, judicial monitoring must continue. But the presumption, I submit, after years of good faith compliance ought to be that the disease has been cured. We expect to continue to counsel the courts consistent with this legal analysis.

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Fair Housing Act

Since November, 1983 when I reorganized the unit responsible for enforcing the Fair Housing Act, our housing program has been a major priority of the Division. The new Section established as part of that reordering of resources had already filed 41 Fair Housing Act suits. In fact, during the 1984 calendar year, the Division filed more Fair Housing Act cases (22) than in any year since 1976. Also, eight other housing suits have been authorized but are not yet filed because we are engaged in pre-suit settlement discussions. During the same period, 24 housing suits have been resolved through the entry of consent decrees or court orders. Favorable action on the requested FY 1987 authorization will allow this initiative to continue.

The cases brought in the past year pursuant to the Attorney General's Fair Housing Act authority include actions against apartment management companies, apartment and resort developers, real estate brokers, and public housing authorities. Defendants in these suits control thousands of housing units.

One case of note is United States v. Town of Cicero, in which we have alleged both housing and employment discrimination by a virtually all-white Chicago suburb. We maintain that the Town's requirement that candidates for municipal employment have lived in the Town for at least a year before being eligible operates as an arbitrary barrier to employment of blacks; further, we maintain that the Town's violations of the Fair

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Housing Act create an independent basis for invalidating the durational residency requirement for employment. (See discussion under Public Employment.)

We assert that Town officials have violated the Fair Housing Act by interfering with individual black families' attempts to reside in Cicero (including the purchase of a house by the Town to prevent a black family from occupying it), by acting to discourage blacks as a group from residing in Cicero and by failing to protect blacks from harassment and interference with their right to reside in, work in, and even be in, the Town of Cicero.

This case was filed in early 1983; after a year-and-a-half of settlement negotiations that were fruitless and a like period of intensive discovery, the suit will soon go to trial. It is estimated that between 125 and 150 persons will testify.

A second case of particular importance is United States v. Yonkers Board of Education (S.D.N.Y.), a housing and school case filed at the very end of the previous administration. After lengthy discovery, the case was tried in 1983 and 1984, with several breaks for settlement negotiations. In nearly 100 days of trial, over 80 witnesses testified and thousands of exhibits were introduced. In November, 1985, the court issued its 600 page opinion holding the School Board and the City liable for the unconstitutional segregation of Yonkers' schools and holding the

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City liable for the discriminatory siting of public and subsidized housing within the City in violation of the Constitution and the Fair Housing Act. Further court proceedings are presently underway to devise remedies for the violations found by the Court.

Another case of interest involving the Fair Housing Act reflects our monitoring activities of our consent decrees. In United States v. Oak Terrace Apartments (Chicago, Illinois), after the court entered a consent order in April, 1985, we learned that the owners of two of the apartment buildings in the complex had rejected the application of a qualified black applicant because of her race. We filed a Motion for Civil Contempt against those owners in August, 1985. The court tried our Motion on March 10-11, 1986 and, at its conclusion, ruled from the bench, finding the owners to be in contempt of the April, 1985 order.

In addition to its Fair Housing Act activities, the new Section has monitored compliance with outstanding court decrees, sought and obtained a contempt order for noncompliance and brought three separate lawsuits under the Equal Credit Opportunity Act. Two of these cases involved creditors with nationwide operations.

The Housing Section also has responsibility for enforcement of Title II of the Civil Rights Act of 1964, the statute prohibiting discrimination in the operation of hotels,

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restaurants, and places of entertainment. Between August, 1978 and December, 1984 the Department filed three suits to remedy violations of this Title. In the last 18 months, however, the Division has focused more direct attention on efforts to vindicate the rights granted by this law and 11 new cases have been initiated. Much of our recent activity focuses on apparently widespread practices designed to keep minorities out of night clubs and other places of entertainment.

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Civil Rights of Institutionalized Persons Act

Our enforcement role with respect to the Civil Rights of Institutionalized Persons Act (CRIPA), continues to be an extremely active one. Our understanding of the statute has been explained to the Subcommittee at some length at previous hearings and, as indicated then, we see no reasoned basis to change our interpretation or the present course of seeking voluntary correction of unlawful conditions of confinement under CRIPA -- a course that coincides fully with the intent of Congress. Specifically, we continue to believe that we can obtain more and higher quality relief, and can obtain it more quickly by identifying constitutionally defined conditions of confinement and, where possible, obtaining the voluntary commitment of the state or local government to adopt corrective programs. Litigation may well be necessary under this approach, but after all reasonable and good faith efforts to negotiate a voluntary resolution of the problems have failed. In sum, voluntary remediation of constitutional deficiencies avoids costly adversarial litigation and immediately benefits those whose conditions of confinement we all agree require improvement as soon as possible.

I would add only that to date this Administration has sent notice letters under CRIPA on 62 occasions, we have filed 9 suits to enforce the Act and 36 investigations are pending. We have obtained 8 consent decrees, and comprehensive voluntary remedial plans or measures in at least 20 other instances. We have, in short, a practical, vigorous and effective enforcement program under this statute.

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Regulatory Coordination

Under Executive Order 12250, the Attorney General is responsible for coordinating implementation and enforcement of section 504 of the Rehabilitation Act, as amended, which prohibits discrimination on the basis of handicap in federally assisted and federally conducted programs and activities. That responsibility has been delegated to the Civil Rights Division.

Unlike the other responsibilities of the Division, this function primarily involves working with Federal agencies on the issuance and implementation of regulations specifying the obligations of recipients with respect to federally funded programs, and the agencies' own obligations with respect to the programs and activities they conduct.

Beginning in 1983, the Division has provided guidance to agencies on the requirements of the 1978 amendment to section 504 which extended its application to federally conducted programs. The Division also assumed responsibility for development of the Department's own section 504 regulation for federally conducted programs. The proposed regulation was published in December, 1983, and the final regulation was published in September, 1984. 28 C.F.R. pt. 39. In addition, 52 agencies have published proposed regulations for their own programs and activities, and 21 of these have published final regulations.

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Executive Order 11250 also applies to statutes prohibiting discrimination on the basis of race, color, religion, sex, and national origin in federally assisted programs. Many of these are "program-specific," that is, they are a part of a funding statute and apply to programs and activities funded under that particular statute. Aside from section 504, discussed above, the cross-cutting statutes that apply to federally assisted programs generally are title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin, and title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities. Because most agencies with covered programs already have implementing regulations, the Division's activities under these statute primarily involve providing technical assistance for management planning and providing advice on legal and policy questions.

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Native Americans

We have continued our efforts to protect the statutory civil rights of American Indians. I have already described our fair employment litigation against the City of Gallup, New Mexico in which back pay of $750,000 to 228 Indians and women victim was obtained. In addition, we obtained consent decrees in two new southwest vote-dilution cases and continued our litigation in a third. Recently, I authorized the filing of three new equal credit and fair housing cases aimed at assuring Indians nondiscriminatory access to equal credit opportunities. In addition, we have pledged our full cooperation to the Civil Rights Commission in their important proposed study of compliance with the Indian Civil Rights Act on the part of tribal governments.

Conclusion

Mr. Chairman, we seek to continue the authorization of the Civil Rights Division at current levels because the law enforcement program we have built is a vital and viable one. In each of the subject matter areas I have described, Congress has expressed its legislative will that the promise of our nation be shared by all without discrimination. The facts show that we are carrying out the Congressional design -- and carrying it out every bit as energetically and vigorously as in prior years, if not more so -- and it is important that this effort be continued.

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Mr. EDWARDS. Thank you very much, Mr. Reynolds.

Mr. Sensenbrenner mentioned Executive Order 11246. I will let him make his own case for resolving this situation, but you and the Attorney General have quite routinely said that this executive order, which requires affirmative action and goals and timetables in hiring by Federal contractors, just results in quotas. As a matter of fact, in January the Attorney General said he had a litany of cases of outrages where quotas resulted from the Department of Labor's enforcement of this executive order. He demanded that it be changed, and there has been a lot of controversy over in the White House and your agency about this executive order.

So, in January we asked for copies of the Attorney General's litany of cases, and on March 28 we received them—56 cases. All the cases were conciliation agreements provided to you by the Associated General Contractors, a group that has never been very friendly to goals and timetables and affirmative action anyway, as you know. But there aren't any quotas in any of these cases. All they require are good faith efforts. I wish you would tell us, Mr. Reynolds, where you came upon the conclusion that this executive order has resulted in quotas. Certainly the proof is not there in the 56 cases that you gave us.

Mr. REYNOLDS. Well, we did share with you and with those who had asked that we provide the information, 56 examples of conciliation agreements that had been furnished to us, which was, what I think, a small number of what is a considerably larger number of contracts that reside in the files of OFCCP in its regional offices, all of which reflect that the way that the OFCCP Program operates and has been administered very directly requires the hiring and promotion of individuals on the basis of race or gender in order to continue to do business with the Government.

Our concern with that kind of a program is that you are dealing here with contractors, who by no stretch of anyone's imagination, had been accused of discriminatory activity or been found to be discriminatory, but as a condition of doing business with the Government, we are operating a regime that requires them to discriminate. We feel that under the law and under sound public policy considerations, that kind of a program is one that needs to be changed so as to remove the race and sex discrimination features that drive the program and insure that what is going on with those contractors is affirmative action efforts to open up opportunities and bring into the work force, on a competitive and meritorious basis, all individuals without regard to race or sex.

We obviously have a difference in terms of how we read the conciliation agreements. That doesn't surprise me, but I feel confident that anybody who picks up the agreements and reads them will see quite clearly that the ones that we furnished are those that call upon the contractors to hire by reason of race or sex in order to be allowed to continue the funded operation with the Government. And I think that, as I say, the 56 cases are but a small sampling of many, many other contracts that certainly on a request of the Department of Labor could be shared with this committee or anybody else.

Mr. EDWARDS. Well, Mr. Reynolds, there are an estimated 157,000 Government contractors, and you came up with 56 conciliа-

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tion agreements. That is less than four one-hundredths of 1 percent of the total. If you can find a quota in one of those, publish it on bulletin boards all over the Capital. I think it is really up to you to furnish us with a couple of cases and come here and sit down and say now in the case of say, the Jones Co., this is what happened. You haven't done that.

Mr. REYNOLDS. Why don't you do this: Why don't you ask the Department of Labor to furnish you their conciliation agreements, and then you can look through them and you can see what they have or don't have. I would not be perfectly prepared—I don't administer the program, so I don't have the documents.

I'm not trying to suggest that the 56 that we had are the whole program by any stretch. I think that the 56 do very clearly demonstrate that the way in which the program is being operated, or at least has been operated, is one that is on the preferential basis——

Mr. CONYERS. Would the gentleman yield?

Mr. EDWARDS. Yes; I yield.

Mr. REYNOLDS [continuing]. But I don't have any problem at all with the notion that if there are other conciliation agreements out there that can be examined, they probably should be examined.

Mr. EDWARDS. Mr. Conyers.

Mr. CONYERS. Mr. Reynolds, are you saying that there are more than 56, and it is up to us to find out which ones they are?

Mr. REYNOLDS. Well, I am saying that however many there are, they would be in the files of the Department of Labor, and the way I understand the committee operates, certainly in terms of my relationship with them over the years, if you wanted information from the Department of Justice, you asked us for the information in our files.

Mr. CONYERS. Well, could you tell us which one of those thousands of contracts you are referring to?

Mr. REYNOLDS. I don't have that information. That is in the files of the Department of Labor.

Mr. CONYERS. Well, how can you make the statement? I mean if you don't have any cases to back up the allegation, what are we talking about? We are not an investigative staff for the Civil Rights Division.

Mr. REYNOLDS. Well, as I say, Congressman, I think that there is ample evidence in the ones that have been provided to us, and certainly in the way the program has been operated with the regulations that are in place that are grounded in a preferential approach to this whole program, that I don't think there is any doubt that it operates in that way.

Mr. CONYERS. Well, which ones have been provided to you?

Mr. REYNOLDS. I furnished the committee with the 56 that we had.

Mr. CONYERS. Other than the 56.

Mr. REYNOLDS. I don't know that we have any additional ones that we have gotten since then.

Mr. CONYERS. OK, we are down to 56. It took you 2 months to get the 56 up here. Remember that?

Mr. REYNOLDS. Well, however long it took us, it took us. I wasn't out trying to——

Mr. CONYERS. It doesn't matter.

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Mr. REYNOLDS [continuing]. Trying to solicit them. The program is being operated in a way——

Mr. CONYERS. Thanks, Mr. Chairman.

Mr. REYNOLDS [continuing]. That it seems to me is clearly reflected in those 56, and those were the ones that were furnished to us, and we were asked by the committee to make them available, and we did. If the committee has an interest in what the other contracts or conciliation agreements look like at the Department of Labor, then I am sure they would be more than happy to furnish them on request.

Mr. EDWARDS. My time has expired. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I want to talk about Executive Order 11246, as well, and before starting, let me say that I think that the administration has woefully mishandled this entire issue in a manner similar to the mishandling of the extension of the Voting Rights Act.

Frankly, I have been reading the newspapers, and have been expecting some kind of a resolution of the debate that has been going on within the administration and also in the public press on whether any changes are necessary to the executive order, and if so, which changes. This matter has been dragged on for almost 9 months, and it is beginning to look like watching a Laurel and Hardy movie with the inconsistencies and contradictions coming from the administration.

Let me cite two specific instances. As the chairman has mentioned, the Justice Department released a 3-inch stack of documents from the Labor Department's files that show some goals and timetables operating as quotas. Joseph Cooper, the Director of the Labor Department's Affirmative Action Program, told the Washington Times, "We do not enforce quotas. There are no ifs, ands or buts about that."

Another Labor Department spokesman, David Demerest, told the Washington Post that the Labor Department sees nothing wrong with numerical hiring quotas. I guess it depends upon which paper you read. Then last Thursday, Larry Speakes, the Deputy White House Press Secretary, said, "The administration position is that we support the minority set-aside program." Within 3 days of that, John Svahn, who is a Presidential assistant said the White House doesn't support set-asides on the basis of race.

Now you are the chief civil rights enforcer of the administration. Can you tell me if the administration opposes goals and timetables or not, and if the administration opposes racially based set-asides or not. Reading the newspapers, I am not sure.

Mr. REYNOLDS. I certainly think that there is no question that the policy of the administration is one that opposes quotas or goals and timetables or set-asides or any other device or technique that prefers some and disfavors others by reason of race, sex, or national origin. The statement by Larry Speakes made reference generically to minority business set-asides, which is a term not unlike affirmative action that has acquired any number of definitions depending on who it is that uses it.

But in the statutory and regulatory framework that the Federal Government deals with, minority business set-asides are those that are defined in terms of individuals who are socially and economi-

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cally disadvantaged. The administration, to the extent that there are programs by statute or regulation that allow for the preference of people who are socially and economically disadvantaged, but do not operate on a racial or gender basis, and I think it is fair to say that those have been upheld by the court, and the administration certainly is not challenging those kinds of programs.

Mr. SENSENBRENNER. Mr. Reynolds, that is all very nice, but I think that everyone on this subcommittee and probably in the public in general is confused because the administration is acting as the Tower of Babel in these particular areas, and while Mr. Edwards and Mr. Conyers have a different viewpoint than I have on this particular issue, I think that it would be beneficial to all parties concerned that the matter get resolved and there be a single cohesive policy of the administration and everybody in the administration enunciates that policy, and then we can debate among ourselves whether it is a correct policy or not.

But we have been treated to a series of leaks, innuendos, press releases, and statements of the various protagonists within the administration to try to justify their own particular purpose, and that doesn't have any salutary effect in enforcement, in getting on with the business of how we protect the civil rights of all Americans.

Now, I am going to continue on this until this matter gets resolved. Perhaps the only way to get the White House to have some decisive action is for me to convince them that my good friends, Mr. Edwards and Mr. Conyers, are terrorists in the area of civil rights, and that way the White House will make up its mind one way or the other. Frankly I would hope that we will get these matters resolved one way or the other, and I am wondering if you would have any information on when the issue is going to be resolved, and if there is to be no amendment to the executive order, an announcement made to that effect, and we can go on from here.

Mr. REYNOLDS. I think there is general recognition of the need to have resolution of what seemed to be statements that they are going in different directions due to the difficulties we have with terms in this area and the different interpretations. So my sense is that the administration does indeed appreciate the need to clarify the entire area and I think that it will do that in the near future.

Mr. SENSENBRENNER. Well, we heard that 9 months ago, and 9 months have come and gone, and that is a long, long time and meanwhile there has been a lot of water over the dam and a lot of ink spilled on the pages of the public press. When can we expect some kind of resolution one way or the other?

Mr. REYNOLDS. I don't control the timing of those decisions.

Mr. SENSENBRENNER. Who does?

Mr. REYNOLDS. Well, certainly the White House and the President are the ones that are the final decisionmakers in that regard. I do think, though, that it is certainly—probably the safest thing for those who view the different statements as being somewhat muddling, to really focus on the briefs that are filed by the United States in court, because those are certainly the position of the United States, and those briefs articulate our position with regard to this matter and the policy of the administration. There is certainly tremendous clarity in terms of what our position is on this whole area of racial preferences in those briefs.

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Mr. SENSENBRENNER. The courts do not either make or amend executive orders. That is done by the President of the United States. Hopefully the courts will not be making and amending Executive orders, because that will be a breach of the doctrine of separation of powers. What we are dealing with here is an issue of public policy, which the President should make and which the Congress must review, and if the policy is not enunciated, there is really nothing for us to review.

We can make comments on what we read in the newspapers, as my friend from California has done today in his press conference, but very frankly that only serves to confuse the issue. But the confusion has not been initiated by my friend from California. It has been initiated by the branch of Government which you, Mr. Reynolds, represent and represent quite eloquently. And I yield back the balance of my time.

Mr. EDWARDS. Mr. Reynolds, the disastrous results of the *Grove City* decision of the Supreme Court are starting to be felt all over the country. We are getting reports from universities and colleges of women students being discriminated against. Nothing can be done about it because of the *Grove City* decision that says that unless the Federal aid is in that particular department where the discrimination took place, nothing can be done about it.

The discrimination is increasing also with the disabled, with minorities and with older people. Clarence Pendleton has been adamant in his opposition to the bill, and he hardly makes a speech where he doesn't say, "I want you to help me to defeat the Civil Rights Restoration Act."

I was wondering if we could perhaps look forward to the Department of Justice helping us with this bill and coming out in favor of it, the simple restoration version, of course, that was reported by the House Judiciary Committee.

Mr. REYNOLDS. Well, Mr. Chairman, the administration is behind a *Grove City* bill that indeed would deal with the very concerns that you have just mentioned—the discrimination of women in colleges and universities across the country, if indeed that is taking place in those areas outside the funded programs. We endorsed the bill that was introduced in the House and also one in the Senate to amend title IX in order to ensure that a dollar to the university would cover the whole university, and not just with respect to the sex discrimination, but indeed with respect to race discrimination, handicap discrimination and age discrimination.

As I say, we have been on record and are on record as supporting that kind of an amendment to the existing statute.

Mr. EDWARDS. But not including the other three laws, just title IX; is that correct?

Mr. REYNOLDS. Well, our support would indeed cover the questions of race discrimination, handicap discrimination, and age discrimination in any educational institution.

Mr. EDWARDS. In any educational institution.

Mr. REYNOLDS. Right.

Mr. EDWARDS. Not just where Federal funds are involved.

Mr. REYNOLDS. If Federal funds went to the educational institution, then discrimination at that institution, whether in the funded

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program or not, would in our view be reachable under the legislation that we have proposed.

Mr. EDWARDS. Well, I think it would be appreciated if you or the Attorney General could write us a letter stating that you are disturbed also with the increased instances of discrimination taking place in the country—if you want evidence of them, I would be happy to provide them to you—and make a statement to the effect that you hope that Congress moves ahead because apparently we are deadlocked right at the moment.

Mr. SENSENBRENNER. Well, will the gentleman yield?

Mr. EDWARDS. Of course, I yield.

Mr. SENSENBRENNER. I think if we can reach an agreement on an amendment or two up here, the bill could go sailing through next week.

Mr. EDWARDS. The gentleman is correct in that the bill that he suggests could go through, but we would be violating all the agreements we made. The simple restoration is the agreement that we have had with the proponents of the bill and all of the civil rights organization, and what Mr. Sensenbrenner suggests in the bill goes substantially beyond simple restoration.

I believe the gentleman from Michigan is recognized.

Mr. CONYERS. Well, I've got the 56 cases, Mr. Reynolds, that were sent up by yourself. Package 1, document 2, refers to a letter of commitment. The name of the company is blanked out, and we have here in which we set forth the goals for minorities, the actualization, the problem area, the reporting signed by the official in the company and sent back. This is evidence of what?

Mr. REYNOLDS. Well, this is a conciliation agreement that identifies as the reason for concern or the reason for additional conciliation agreement that there has been a failure to meet female and minority utilization goals, and that the way in which funding can continue would be to undertake to meet the utilization goals.

Mr. CONYERS. Right. Is that illegal?

Mr. REYNOLDS. Well, I think there are considerable problems if indeed a program is being operated in a way that insists that those who have never been found to discriminate must hire a certain number of females or minorities in order to continue to do business with the Government.

Mr. CONYERS. Where does it say that on this document that you submitted?

Mr. REYNOLDS. The document I submitted indicates that the problem area that the contractor needs to be concerned about is the failure to meet the utilization goal; that is, that he has not hired enough females or minorities to satisfy the Federal Government; that there is a sufficient racial balance in the work force to be acceptable, not because he has been discriminating or because of any pass discrimination on the part of this contractor. There is no suggestion of discrimination. It is simply a suggestion that if you want to do business with the Federal Government, you need to racially or from a gender point of view, balance your work force.

Mr. EDWARDS. Will the gentleman yield?

Mr. CONYERS. Yes, sir.

Mr. EDWARDS. This is news to me that there are threats or admonitions in any of these documents that you have provided that say

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that these contractors might lose their contract. There isn't any indication of that whatsoever. They are only asking for, sort of, weak enforcement—as a matter of fact, it probably violates the law on the lesser side rather than the stronger side.

Mr. REYNOLDS. What is it that would suggest to you that there is an obligation on the part of a contractor that has never been found to discriminate nor any suggestion of discrimination, that there is an obligation on the part of that contractor to hire by reason of race or sex in order to achieve some balance defined as utilization.

Mr. CONYERS. Well, that is the civil rights laws as specifically set out Executive Order 11246: goals and timetables for minorities and women.

Mr. REYNOLDS. Well, actually 11246 doesn't include that; 11246 simply says if you do business with the Government, don't discriminate and employ affirmative action efforts to insure that there is no discrimination. There is a regulatory regime that is tied to an underutilization formula that requires that there be racial balancing within the contractors' work force as a condition of doing business with the Government, and it is that regulatory regime that is the problematic feature of the program. What the enforcers of that program say is that you have got a problem area that you better correct under a conciliation agreement in order to continue to do business with the Government.

Mr. CONYERS. I yield to counsel to help us out. Here we go again.

Mr. ISHIMARU. Goals and timetables are in the Labor Department regulations, and they are part of the law, aren't they?

Mr. REYNOLDS. That is part of that regulatory structure.

Mr. ISHIMARU. So it would be an applicable part—goals and timetables are subsumed into Executive Order 11246. Would that be a fair statement?

Mr. CONYERS. Of course it is.

Mr. REYNOLDS. I think that certainly the regulations promulgated under it would certainly suggest that that is the program that is contemplated by the agency charged with the enforcement of 11246.

Mr. CONYERS. So that is where the letter of commitment flows from.

Mr. REYNOLDS. Right.

Mr. CONYERS. Right?

Mr. REYNOLDS. Sure.

Mr. CONYERS. OK, now where in this letter of commitment—

Name of company hereinafter agrees to initiate and faithfully implement the following specific commitments and activities including reporting progress as a demonstration of good faith to comply with the provisions of Executive Order 11246 as amended of the Secretary of the Labor.

So far I guess we are legal.

Second paragraph:

The company further understands that (a) making such commitments does not preclude future determinations of noncompliance based on the finding that commitments are not sufficiently undertaken to achieve compliance, and (b) failure to faithfully implement any or all of the attached commitments may result in a finding of noncompliance, an immediate of issuance of a show cause notice to commence enforcement action.

So far we are OK. We are legal.

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OK, third paragraph:

Name of the company agrees that corrective measures will be taken for the deficiencies listed below.

Problem area in this one company:

Failure to meet the female utilization goal for females in all on site construction crafts in a certain area follows * * *

And they list the operating engineers. The goal is 6.9 percent. The actual utilization is 14.4, and they have got "exceeded." Laborers, 6.9 percent; actual utilization, 1.5. Teamsters, 6.9, exceeded, 8. Technical engineers, six surveyors, 6.90. That's page 1.

How does that strike you, Mr. Reynolds?

Mr. REYNOLDS. A very accurate reading of the first page.

Mr. CONYERS. Anything there offend your sense of constitutionality?

Mr. REYNOLDS. Well, I think that last paragraph that identifies the problem area, is to me a problem area.

Mr. CONYERS. What are you talking about?

Mr. REYNOLDS. The one that says that a corrective measure is necessary or that you can be faulted as a contractor who has never discriminated because you have failed to achieve a certain goal or quota that is tied to gender.

Mr. CONYERS. Well, now wait a minute. I just read that, and you told me I read it right. Now where does it say you could be faulted? Did it say it will commence an enforcement action if you blow it?

Mr. REYNOLDS. It says that the contractor agrees that corrective measures will be taken for the deficiencies——

Mr. CONYERS. Right.

Mr. REYNOLDS [continuing]. Listed below. Deficiency one is the failure to meet the female utilization goal for females in all onsite construction crafts.

Mr. CONYERS. Fine. So what? What is the problem?

Mr. REYNOLDS. Well, in the absence of a finding of discrimination, I think that there is a serious problem to suggest that that is a deficiency.

Mr. CONYERS. You mean that they shouldn't be telling them that they are underutilizing females in these crafts?

Mr. REYNOLDS. Well, they are telling them that corrective measures must be taken to insure that you hire by gender in order to achieve a certain number. In other words, you—well, that is what it says. You have to hire by, in this case, gender in order to achieve a certain number.

Mr. CONYERS. Well, how are you going to achieve, Mr. Reynolds, the goal if we don't measure how many women they are hiring in the particular construction crafts?

Mr. REYNOLDS. I think that if you embark on a program of recruitment and outreach and merit selection on the basis of the qualifications of individuals, that it would probably surprise a lot of people to find that you would have an increased number of females who would enter the work force, and not only that, they would enter without the deviciveness of being affirmative action employees. In addition to that, they would have upward mobility that probably would allow them to move up the corporate ladder a lot faster and more effectively.

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Mr. CONYERS. Well, I respect your opinion as much as any other American's, but that doesn't happen to be the law. The law is goals and timetables. I know you may not like it, but it isn't this idea that you have, which is a beautiful one. We are operating under goals and timetables in the labor law, incorporated, subsumed into the Executive Order 11246. Here is a Labor Department letter to a contractor saying, "Dear Friend, you are not making the goals. We are not taking any enforcement action. We are just letting you know where you are off from the goals."

It is a friendly letter. It says you are over—as a matter of fact, you are getting brownie points. In operating engineers you have got 14.4 percent women, and the goal was only 6.9. They put, "exceeded." That is equivalent of a star. And, teamsters only 6.9 percent women—8.0, exceeded, another star. You are doing fine in two of the four areas. You are not doing so hot in laborers where you only have 1.5 percent women, and we have a goal of 6.9. It says, please try to faithfully implement these commitments, because if you don't, we may have to begin an enforcement action which would take, as we know, 100 years to ever solve. Their lawyers and our lawyers would be there forever.

Now, how can you, sir, as an officer of the Government come before the committee that wrote this law, and tell us that in your judgment page 1 shows you why we ought to suspend Executive Order 11246 and get rid of goals and timetables.

Mr. REYNOLDS. Well, the committee didn't write the law, but——

Mr. CONYERS. I see.

Mr. REYNOLDS [continuing]. Beside that, it is an executive order, but I think that the answer is that——

Mr. CONYERS. Well, I'm glad to know that. I have been up here for 22 years. I guess somebody is writing the law.

Mr. REYNOLDS. The executive order is signed by the President, and it is done by the executive, not the legislative branch, and I think that the chairman actually pointed that out in an earlier colloquy.

Mr. CONYERS. Well, thanks a lot. But go ahead.

Mr. REYNOLDS. Well, the point is that we have questioned, and we have questioned both in court and certainly in the public policy arena whether a regime that is in place that does indeed depend on preferential hiring of individuals because of skin color or gender is a proper way to proceed in the employment arena. Our very strong view of the matter is that if indeed you are going to try to achieve some kind of racial or gender balance simply by reason of race or sex or national origin in the work force without any showing whatsoever of discrimination or past discrimination, then you have transgressed what is indeed permissible under the law.

That issue is actually before the Supreme Court now, and we have filed a brief in the Supreme Court, and I think that we will have some considerable enlightenment on that from the Supreme Court by the time that the term ends this June.

Mr. CONYERS. Well, we didn't accuse these people of being racist.

Mr. REYNOLDS. That's right.

Mr. CONYERS. We didn't accuse them of anything accept not meeting the goals, and we are trying to get them to meet the goals.

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Mr. REYNOLDS. Well, Congressman Conyers, I don't think it would be permissible for me to suggest to you that you have to have *x* number of females, *x* number of Hispanics, *x* number of blacks, and *x* number of whites on your staff in order for you to do business as a congressman.

Mr. CONYERS. Well, as a matter of fact, the law for the Government does require that. As a matter of fact, we have cases coming out of the Department of Justice on the failure to meet these goals themselves, if I remember correctly.

Mr. REYNOLDS. I believe that is not correct. Plus, I would note that Congress has quite astutely avoided covering itself under any of these laws every time it has been suggested, so I would have to suggest that——

Mr. CONYERS. Well, dear friend, we write the laws.

Mr. REYNOLDS. That is the point I just made.

Mr. CONYERS. I know you don't like that, but it just so happens that we write the laws, and we are talking, not about my office——

Mr. REYNOLDS. Right.

Mr. CONYERS [continuing]. We are talking about the guys that do business and make bucks with the Government's shop.

Mr. REYNOLDS. Right.

Mr. CONYERS. Now, for all the people in the Congress that want to do it your way, you can contact your friendly local congressman and get a bill introduced to include the Congress, and anything else you want. But right now we are talking about why this is so offensive, and I really, for the life of me—you tell me there is a Supreme Court case coming down, and until then this looks like pretty good law.

Now, we started this idea about suspending the Executive Order 11246 in August of 1985. Am I right or wrong?

Mr. REYNOLDS. I don't know of anybody who suggested suspension of the Executive order at any time under this administration.

Mr. CONYERS. OK, wait a minute. Counsel, let's get into this, please. I'm getting into deep water again. Now, I am going to repeat this, and you listen real carefully.

OK, Mr. Reynolds, it was about in August of 1985 last year, that the talk—when Congress was in recess, by the way—that the talk about suspending or eliminating Executive Order 11246 about goals and timetables started coming out from the administration, right or wrong?

Mr. REYNOLDS. I know of no time that this administration has suggested either suspension or elimination of the Executive order.

Mr. ISHIMARU. There was a draft, wasn't there, of new language for Executive Order 11246, that was leaked to the press last August. It came from the Civil Rights Division.

Mr. REYNOLDS. There was a draft—in fact, I think there has been more than one draft, ways in which the Executive order might be modified, not by changing any existing language, but by adding some language to it. The effect of all of those drafts would be to make a modification of the Executive order that, in our view, would clarify it to bring it back in line with its original meaning, but under no circumstances has anybody suggested either suspension or elimination of the Executive order.

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Mr. ISHIMARU. But the draft we saw last August had in it language that would, one, bar the use of goals and timetables or other numerical remedies, and would also make statistical remedies suspect as well. That was in the language that we saw last summer.

Mr. REYNOLDS. If you read the Executive order, the Executive order says nothing about goals and timetables.

Mr. ISHIMARU. But the Labor Department regulations do.

Mr. REYNOLDS. Sure, but the question that I was asked, and the one I answered was whether there was any consideration given to suspension or elimination of the Executive order. The answer to that question is, no. We think the Executive order, were it to stand on its own, and not be encrusted by some of the administrative and judicial interpretations that have been added to it, it would be perfectly fine. And what the administration is considering is ways in which to clarify the existing language in the Executive order so as to bring it back into line with the original meaning of the Executive order when it was first issued.

Mr. ISHIMARU. There was thought last August of making major changes to the Executive order; is that correct.

Mr. REYNOLDS. I think I have already answered. There was no thought to suspending it. There was no thought to eliminating it. There was a thought to keep it in place, and to insure that it operates in the way that it was originally intended to operate, and that the language, to the extent that it had been unclear and therefore lent itself to other interpretations, would be clarified.

Mr. CONYERS. Is the witness under oath, Mr. Chairman?

Mr. EDWARDS. Yes.

Mr. CONYERS. And I note that he laughed when I asked the question. Now, let me——

Mr. REYNOLDS. That's just because I mentioned at the outset that I would tell the truth whether I was under oath or not under oath.

Mr. CONYERS. Well, I'm sorry. The only reason I asked, sir, is I wasn't here, and I didn't know.

Now, there was a release from the Civil Rights Division last summer that dealt with modifying Executive Order 11246; is that right or wrong?

Mr. REYNOLDS. There was a draft that was leaked that did suggest modification of the Executive order.

Mr. CONYERS. So there was something about this Executive order changing it that came out last summer. What were the changes that were reported to the press?

Mr. REYNOLDS. Well, if you mean what were the changes reflected in the draft that was leaked to the press——

Mr. CONYERS. I mean what were the changes—let me ask the questions, and you give me the answers.

What were the changes that appeared in the press?

Mr. EDWARDS. I think we have to—that is the second bell, Mr. Conyers, and if we can take a short recess, we will do that.

[Recess.]

Mr. EDWARDS. The subcommitee will come to order.

Mr. Conyers?

Mr. CONYERS. Mr. Reynolds, out of these 56 cases, have any of these people had enforcement actions taken against them?

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Mr. REYNOLDS. I am not familiar. I don't even know the names of most of the entities that would be involved with this. When we received them, the names were crossed off, so I don't know the answer to that.

Mr. CONYERS. Would it matter if they had had enforcement taken against them and had been denied a contract?

Mr. REYNOLDS. Matter in terms of what?

Mr. CONYERS. In terms of your objection to the letter of commitment that you made an exhibit as a reason for changing the Executive order that first came to our attention that you wanted to modify in August 1985.

Mr. REYNOLDS. My understanding is, and I could be corrected, but my understanding is that these kinds of conciliations are a form of an enforcement action. But if you mean, debarment action, I don't think that any—I don't know whether any of these have or have not, but there have been so few debarment actions that have been brought by the department, that I suspect that that has not occurred. But in terms of my understanding of how the program operates, I don't think that the legitimacy or illegitimacy of the use of race and gender preferences in the hiring decisions turns on whether there is a debarment action.

Mr. CONYERS. So if they hired up to their goal, and everything worked out all right, it would seem that you wouldn't have much of a case for complaint. They complied. The law was met, and everything is OK.

Mr. REYNOLDS. I don't know if that is the case. It seems to me that one of the problems with a utilization formula is that the fact that one hires up to a goal does not suggest at all that there is no discrimination. Indeed, it could well be that the goal operates as a ceiling, and that other people who would like to come in the door who are qualified and would want to be employed by one of the employers might be turned away because it would knock out of kilter the utilization formula, and therefore that individual would be turned away solely by reason of race or gender, and if that were the case, I would find that a discriminatory action that would be troublesome under the law.

Mr. CONYERS. Well, what about the law that we already have that says that they have to meet goals and timetables in affirmative action.

Mr. REYNOLDS. Well, the regulatory structure that you are talking about that is on the books is one that has been mentioned before in the hearing and is under review by the administration for modification because it does indeed have that feature, and that feature is one that runs contrary to the legal arguments that the administration is making in court.

Mr. CONYERS. Well, it is still the law, though.

Mr. REYNOLDS. Well, and we are not suggesting that short of a change of that—the point of focusing on the contracts is not to say that the people in the regulatory enforcement area are acting in a way that is not countenanced by the regulation; it rather is to point up the fact that the regulation does indeed drive them to make these kinds of decisions, and that these race conscious and gender conscious decisions, in the absence of any discrimination on the part of those who are required to use them as part of their

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hiring and promotion decisionmaking process, is what is offensive under the law.

The *Wygant* v. *Jackson School Board* case that is before the Supreme Court now raises that question, whether an employer in the absence of discrimination can indeed, as a matter of policy, undertake to structure its work force in line with a utilization principle or a balancing principle consistent with the Constitution.

Mr. CONYERS. Well, until the law is changed, that is until the Congress—we still make the laws. Until it is changed or until the Supreme Court strikes it down, it is still the law.

Mr. REYNOLDS. Or until the Executive order is changed and the regulations underneath it. That would be correct.

Mr. CONYERS. Wait a minute, I didn't say that. You say another way to change the law is to change the Executive order which would thereby change the regulations, which would thereby change the law.

Mr. REYNOLDS. Well, I think that another way to make a change is to——

Mr. CONYERS. That's not taught in law school, you know. That is not taught in law schools how laws are made.

Mr. REYNOLDS. It should be.

Mr. CONYERS. By changing the Executive order which changes the regs, which then changes the law.

Mr. REYNOLDS. Well, then it should be. If the President signs an Executive order, then it is the President who must amend or revise that Executive order, and if there is a regulatory regime that is promulgated pursuant to that Executive order, then that regulatory regime will be controlled by the terms of the Executive order.

Mr. CONYERS. Let me ask counsel, then, does the Executive order flow from the law, or does the law flow from the Executive order, as you understand it, counsel? And if you don't know, don't be embarrassed. Say so.

Mr. EDWARDS. I don't know, but I'll answer. It flows from the law. It has to. An Executive order has to have law behind it. It is an interpretation, generally speaking, otherwise it would be outside the law, but Executive orders always have law behind them; isn't that correct?

Mr. REYNOLDS. Well, Executive Order 11246 is not one that was issued pursuant to title VII, and therefore it is not an Executive order that stands or falls by virtue of what happens under title VII. I think that the Executive order is one that is controlled by general constitutional principles so long as the public sector is involved, and the private sector—if the executive branch issues an Executive order, then it will stand on its own two feet.

Mr. EDWARDS. And the Constitution is the supreme law of the land.

Mr. REYNOLDS. Certainly as to public employment, that would be correct.

Mr. EDWARDS. I think we have to move along, you will get another go at it, Mr. Conyers.

Mr. CONYERS. Well, that is very interesting. Could I just ask one more question?

Could you cite me a historical example of where the Executive order changed the law in American history?

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Mr. REYNOLDS. Where the Executive order changed the law. I guess all Executive orders will change the law by virtue of their terms.

Mr. CONYERS. All Executive orders complement existing law.

Mr. REYNOLDS. Well, I mean——

Mr. CONYERS. Is that a fair statement?

Mr. REYNOLDS. I think that probably depends on the eyes of the beholder.

Mr. CONYERS. So you are not prepared to commit yourself on the question that Executive orders complement the existing law?

Mr. REYNOLDS. Well, I have to admit I don't have at the ready a full knowledge and understanding of all Executive orders. So I can't speak to how I would construe or interpret Executive orders that are in place and how they interrelate.

We have a lot of Executive orders in the foreign affairs field that relate in one way or another to international law, and certainly there are some places there where there are inconsistencies and conflicts that abound. There are a lot of other Executive orders that are in the domestic area, and I just have to plead ignorance. I don't know them all, so I can't answer your question.

Mr. CONYERS. OK, thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Conyers.

Counsel, do you want to ask some questions.

Mr. SLOBODIN. Yes, thank you, Mr. Chairman.

Mr. Assistant Attorney General, I wanted to get into one of the exhibits that was distributed 2 weeks ago as part of the package showing, at least in these 56 cases, how the goals and timetables have been distorted into quotas, and the one I wanted to get into was the case concerning the United Bridge Co. of Lenexa, KS. Just to refresh your memory on the facts of this case——

Mr. REYNOLDS. Can you just identify for me where in—the number?

Mr. SLOBODIN. It is package 1, document 3.

Mr. REYNOLDS. Thank you.

Mr. SLOBODIN. This is a small trucking outfit that has 15 hourly employees and five different trades. They had four minority employees out of that. That is 26.7 percent minorities. The contractual goal was 12.7 percent, and they were cited for failure to meet our truck driver goal because neither of our two truck drivers—he writes here in this letter—was listed as a minority.

Now, as the regulations are currently enforced, what is Mr. Supica going to have to do—and looking at this letter that his company received, how would you think a small businessman would react to it?

Mr. REYNOLDS. Well, the letter that he received, and it seems to me it is fairly self-evident on its face. It does indeed require him to recruit and to hire qualified minorities and females until such time as the required utilization goals have been met, and I think that the failure that was identified with the failure to achieve the minimim minority utilization goal and the remedy was to hire until you do achieve it, which I think is about as close to a quota as one can get, and then——

Mr. SLOBODIN. Excuse me, sir. If I can just ask that if one wanted to get quotas into the regulations but felt they couldn't after the

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Bakke decision, they wouldn't call them quotas. How do you think one would try to get quotas in the regulations if they didn't want to do it on its face?

Mr. REYNOLDS. Well, I want to shy away from the debating the issue on the basis of one or two terms which are laden with a lot of innuendo and double entendre and what have you. I think that whether you call it a quota or a goal or a utilization factor or a set-aside, if you are talking about hiring by race or gender or ethnic background, then I think that you run afoul of what the law does allow in this country. I think that the program that we have here is one that does indeed put all the pressures on those who do business with the Government without regard to any evidence of discrimination in the past to indeed shape their work force by hiring with the gender and the skin color and the ethnic background of the applicants in the forefronts so as to achieve utilization.

The difficulty with the program is that the way it operates is not—well, it is discriminatory against everybody. It really is essentially telling the people in the black community that they can compete for those slots that are set aside for blacks under the utilization formula, and the Hispanics that they can compete for the Hispanic slots against each other, and the females that they will compete for slots that are set aside for them. What you do is you are basically carving up the work force on the basis of these immutable characteristics, and you are telling individuals that they can't compete for 100 percent of the jobs against everybody, but they can only compete for whatever their utilization percentage is against those people who are similarly situated in their group, and that is by definition a discriminatory regime, and it is one that I think cannot withstand legal scrutiny.

Mr. SLOBODIN. Thank you. As I recall in this case, didn't Mr. Supica go public on this? I think he appeared on nationwide television.

Mr. REYNOLDS. Right.

Mr. SLOBODIN. Haven't a number of small businessmen at least publicly voiced their concerns about the way these regulations have been enforced?

Mr. REYNOLDS. Well, I think that is right.

Mr. SLOBODIN. I mean this isn't something you would have to find out just by going through documents locked in some vault in some executive department. These cases have been out for years, and that is one of the concerns that President Reagan, in fact, had when he campaigned for the presidency in both years.

Mr. REYNOLDS. Considerable controversy has swirled around the Executive order and the Executive order program for some period of time, and a number of those who are subjected to it have stated in no uncertain terms that it operates in precisely the manner that is suggested by these agreements and that we have suggested.

Mr. SLOBODIN. Thank you. As I recall, the goals and timetables, these regulations were promulgated during the Nixon administration.

Mr. REYNOLDS. That's right.

Mr. SLOBODIN. Maybe my history is wrong, but I think Nathan Glazer, in his book, "Affirmative Discrimination," mentioned that Nixon, at the time he was promulgating these regulations, was vili-

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fied by the civil rights community. If in fact it was under his administration that these goals and timetables were promulgated, and this is what the major dispute is about here today; should small businessmen have confidence that they are not going to be branded as racists when the very person who put in the goals and timetables was branded as a racist?

Mr. REYNOLDS. I'm sorry I don't follow the question.

Mr. SLOBODIN. OK, I have no further questions. Thank you.

Mr. EDWARDS. Mr. Reynolds, to change the subject for a few minutes, because we don't have much more time here, how are we doing on the desegregation of schools? Are we desegregating any? I know it is a goal shared by all of us.

Mr. REYNOLDS. I think we are doing extraordinarily well.

Mr. EDWARDS. Could you name us a couple that are doing better?

Mr. REYNOLDS. I think we are doing extraordinarily well in the desegregation effort. We have put in place in Bakersfield and Caddo Parish in Chicago, in Ector County down in Texas, in a number of jurisdictions an alternative to a mandatory student assignment program that is one, as I mentioned in my opening statement, that does depend on the magnet school features as a predominant part of the plan. While that was originally received with some skepticism and much resistance, I am really happy to report that now it seems to be the formula that is being adopted by courts and by even our most critical adversaries in cases that we are not even in, where the courts are turning very directly to some variant of a magnet school program because it is proving to be not only desegregating, attracting white students into what have been predominantly black communities and predominantly black schools for educational, but it also has had the added feature of enhancing the quality of education within the public schools, bringing the parents back into the school system, and paying attention to some of the needs that do exist in the school system, restoring the tax base that was being diluted and decreased because of a number of parents and students that were leaving in order to avoid a mandatory bussing kind of a remedy.

I think that it can be said without any reservation that this alternative is one that both black and white students and parents alike are embracing and welcoming and so are the courts. Instead of putting the burden all on the minority students to go long distances in terms of bus rides to move from a neighborhood school to a predominantly black school on the other side of town, we have come up with a program that puts in place incentives for transfers that are educationally attractive, that desegregate the systems and enhances the educational quality of the whole public school system. And I am excited about it. We take some considerable degree of pride in having weathered the storm and persevered and put out a blueprint that now seems to be one that is generally adopted by just about everybody in this area.

Mr. EDWARDS. Magnet schools cost a lot of money and entail increased expenses for bussing and for enhanced educational opportunities. Are you recommending also that the Federal Government provide some resources for this additional expense to the States?

Mr. REYNOLDS. Well, I believe the Congress, 2 years ago, did indeed pass a piece of legislation that allocated a certain amount of

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money for magnet school programs generally to be distributed, I believe, through the Department of Education to various schools that were in the desegregation process. I think that if public policy call for Congress to make, and if Congress wants to allocate funds for that purpose, then that certainly is legitimate legislation that it has done before and is permissible and proper.

I do think that the original concerns expressed regarding the cost of these kind of programs, it turns out have been widely overstated, and that indeed you can put in meaningful magnet school programs which are phased into a system in a way that does not have the kind of cost crunch that everybody had predicted originally. And where that is being done—a good example is Prince Georges County here in Maryland. We weren't in that case, and they moved to a magnet school program, and the community as a whole is excited about it, and it is really doing some very positive things both in terms of desegregation and education.

I think that the original criticism that was leveled about the cost of these programs has begun to subside quite markedly, because you can indeed fashion magnet school programs and other features of those programs without the kind of cost crunch that everybody had suggested.

Mr. EDWARDS. Mr. Ishimaru.

Mr. ISHIMARU. Thank you, Mr. Chairman. Let me follow up on the school desegregation question. Most of your school desegregation remedies using voluntary methods contain a good faith standard followed for a set period of time. After that time, as long as good faith has been followed, the school district would be discharged from its obligation to desegregate.

What happens if they have good faith efforts and the schools are still segregated. What do you do then?

Mr. REYNOLDS. Well, I don't know of any decrees like you described. I think all the decrees are ones that have specific features that the school authorities have to adhere to and compliance is measured by the way in which they do it here to those features, and of course the impetus, the whole objective of the school desegregation decree is to remove the dual system to make sure there are no barriers to students attending schools where they want to without regard to race.

When there is full compliance, and the court has declared that it is a unitary system, then as the fourth circuit has said in Norfolk, the school system is returned to the school authorities to deal with problems that arrive in the district at that time or subsequent to that.

Mr. ISHIMARU. Let me turn back for a second to affirmative action. Not to beat a dead horse, but let's assume that these 56 cases are indeed quota cases and put them aside. All 56 cases have to do with the construction industry, which is covered by a separate section under the Executive order. Can you name for me a single case where a nonconstruction contractor uses quotas?

The U.S. Chamber of Commerce testified last summer when we held hearings on affirmative action and could not name a single case. Can you?

Mr. REYNOLDS. When you ask to name a single case, I guess that that would be a question that I would suggest maybe you want to

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ask of those responsible for this enforcement program. I can't even name you, accept by the numbers that I put on them, the people in the construction industry who have had the problems that are indicated by these 56, and I can't name you others in the construction industry. So if you want me to name a case, the answer is I don't have the information available to me that would allow me to pick out names and cases.

I think that it is fair to say that there had been any number of those who have been under this program who have said in one way or another that the problems that we suggested are there and that seem to be endemic to the regulatory structure that is in place is indeed a real live problem.

Mr. ISHIMARU. But the problem that we are having is that the Labor Department says there aren't any quotas. The only people saying there are quotas are at the Justice Department. We are trying to find where these quotas are being used.

Mr. REYNOLDS. I think what Labor is saying is that the way in which Labor is now operating this particular program, it is removing the features of the program that are identified in the 56 contracts that we have provided and that have been a central part of the program up until recently, but that Joe Cooper, who is now the head of the office, and Secretary Brock have acknowledged there were indeed these concerns that we have identified and have said that they have undertaken to operate the program so that the preferences that are suggested by the utilization factor are not ones that control the hiring.

Mr. ISHIMARU. But both Mr. Brock and Mr. Cooper have said that quotas are not being used. They have both said there may be problems, but both have said rather clearly that quotas are not being used.

Mr. REYNOLDS. Well, then there would be no problem changing the program so that you would have no way for anybody else who might come along down the road to put the quotas in place, again, right. I mean it seems to me that if they are not being used, then certainly there is no suspension or elimination or alteration of the program at all, and simply is a change that would be something that was recommended in order to bring the terminology of the program in line with actual practice, and therefore from a legal standpoint match it up to be consistent with what is being said in the other areas.

Mr. ISHIMARU. Last year you spoke in front of the Wilmington Rotary Club in Delaware, and you said that goals and timetables are being used as a cap to exclude women and minorities from opportunities, because employers would meet their quota and no longer hire women and minorities.

Can you cite any cases, any instances of this happening? We have never seen anything like that, yet claims again are being made.

Mr. REYNOLDS. Well, I think that those who are in the program have made those claims, and if you read——

Mr. ISHIMARU. Can you cite me a case?

Mr. REYNOLDS. Excuse me. If I could finish my answer, the program is bottomed on what it calls a utilization formula. The utilization formula will require that as to every component in the work

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force, you must have full utilization of minorities and women and people who are to be recipients of that particular operation.

The problem that that raises is that when you get to the point in your work force where you have full utilization in every component, if you promote somebody out of one of the components or transfer them into another, you throw yourself out of sync on the utilization formula, and you have got a regulatory regime which says you cannot do that. So what happens is you come into what is a very real grid lock that has the effect of being a disincentive on promotions and on hiring and on transfers because once you hit full utilization, you can't make a move without knocking somebody else into underutilization, and if you do that, then you have got a problem. You are dealing with an eight-factored structure that is being enforced to achieve full utilization in a way that, once achieved, it tells those people who knock on the door for a job that they cannot come in because of their skin color—because then my full utilization will become overutilization, and that means somebody else will be underutilized.

Mr. ISHIMARU. I certainly understand the theory, but do you have a case?

Mr. REYNOLDS. As I say, I am not the enforcer of the program, but I think that the regional offices of OFCCP have a number of contracts that are involved, and I suggest that perhaps that would be where to look in order to get the information you want. I am responsible for public employment discrimination, and therefore, that is not my program.

Mr. ISHIMARU. Last year the Justice Department prosecuted a number of black civil rights leaders in Alabama for voting fraud. During our investigation, we were told that the Civil Rights Division had nothing to do with the Alabama cases and that this was totally in the Criminal Division and its Public Integrity Section. We asked you to testify at the hearings, and you said you had nothing to do with it, and would not think it would be valuable for you to come.

At the hearing, though, the Justice Department witnesses said that the Civil Rights Division knew about the cases, and did not have any problems with bringing prosecutions and doing an investigation against black activists, and going out and questioning elderly blacks in Alabama, in the 2 months preceding the 1984 presidential election.

My question is this: did the Civil Rights Division know about the cases? Did it acquiesce? Were you involved, and if so, in what form?

Mr. REYNOLDS. Certainly, I knew about it. I was not involved in it—I think the prosecutions were actually handled for the most part with the Criminal Division and the U.S. attorneys' offices, but, yes, I knew about them. There were allegations made by black citizens in Alabama that other blacks had indeed committed voter fraud in the election process through one form or another, and it seemed to me that when those allegations come in, there is a responsibility to investigate them and to determine whether there is a basis to prosecute or not, and that is the way the criminal process works and has to work. So I said I thought that was for the

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Criminal Division to sort through and to react to in the proper manner, otherwise I had no involvement.

Mr. ISHIMARU. So you didn't see any civil rights implications coming out of doing an investigation—a major investigation—in the 2 months preceding the 1984 general election? Were those concerns outweighed by the need to go out and do a criminal prosecution?

Mr. REYNOLDS. The way that the issue arose was that black citizens were accusing other black citizens of voter fraud. I didn't see any civil rights implications with those kinds of charges, and it seemed to me that with those charges, we ought to be investigating to see whether there is truth to them or not truth to them. If we didn't, we would be, I think, remiss in our responsibilities.

Mr. ISHIMARU. Last year we asked about how many section 2 cases were filed under the Voting Rights Act. Looking through the authorization request this year, it indicates that four cases were filed. Where were these cases filed and in what States?

I guess my real question is there are more than four States that are covered by section 5 of the act, States which have a history of problems in voting. It seems like an awfully small number of section 2 cases are being brought by Justice.

Mr. REYNOLDS. Well, I'm not sure I understand that.

Mr. ISHIMARU. Did you file any section——

Mr. REYNOLDS. If there are a large number of States that are covered by section 5 and what they do in their voting behavior has to be pre-cleared before they do it by the Justice Department, then my sense is that you would probably have less section 2 cases in those areas where the Justice Department has had to pre-clear, than you would in those areas where it hasn't, but I would have to also immediately add that that doesn't necessarily follow. So I just don't know that one can extrapolate by virtue of all the States that are under section 2. I don't know if one can extrapolate by virtue of section 5 and section 2 coverage what we all should anticipate as to the number of cases brought under the Voting Rights Act.

Mr. ISHIMARU. Well, did you file any cases in Mississippi or Alabama or Georgia?

Mr. REYNOLDS. I can get that information for you. I just don't have it at my fingertips, but it is certainly a matter of public record and available and I would be more than happy to provide it. I just don't know it off the top of my head.

[See p. 68.]

Mr. ISHIMARU. Thank you very much. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Conyers, have you got anymore questions?

Mr. CONYERS. Yes, sir, I do.

Mr. Reynolds, Jefferson Beauregard Sessions, who was the U.S. attorney down there, was rewarded with a nomination to the Federal bench. He is now in hot water because of his racial remarks, stated during his confirmation process that the Civil Rights Division knew about and supported him in his prosecutions. Is that a fair statement?

Mr. REYNOLDS. I don't think that is inconsistent with what I just testified to earlier. Certainly we knew about it, and we thought that he had a responsibility to pursue the matters, and if he felt that the evidence was sufficient to bring a prosecution, that is for

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the Criminal Division and the U.S. attorneys to decide based on the evidence they have. I didn't have any of that information available to me.

Mr. CONYERS. There is no policy or practice that civil rights prosecutions are cleared through the Civil Rights Division?

Mr. REYNOLDS. Oh, there are. This was not a civil rights prosecution. This was a criminal voter fraud prosecution.

Mr. CONYERS. Well, I guess that is a very fine line, isn't it?

Mr. REYNOLDS. Well, I guess if a number of whites alleged that other whites had committed voter fraud by stuffing a ballot box, I would not review that as a civil rights violation.

Mr. EDWARDS. If the gentleman would yield, that is not a total statement you just made, Mr. Reynolds. Not only did some blacks complain about other blacks, but a lot of black citizens of Alabama complained bitterly that their civil rights were being violated for political reasons by a local U.S. attorney. It was not the Washington, DC, Criminal Division. So that is the whole story, and apparently you heard about these alleged violations of civil rights. But you said the criminal matters are more important, and you didn't do anything about it; isn't that a correct statement?

Mr. REYNOLDS. Well, we looked to see where the complaints were coming with regard to the voter fraud, and the——

Mr. EDWARDS. Right, and that is the first time that you mentioned that you had complaints about voter fraud.

Mr. REYNOLDS. No, I didn't have the complaints. I was informed by the Criminal Division that the complaints were being leveled by black citizens against other black citizens who they claimed were committing voter fraud. That is a criminal action——

Mr. EDWARDS. You also heard at the same time that there were some bitter complaints about civil rights being violated, right?

Mr. REYNOLDS. I think the complaints were that by reason of going forward with these prosecutions that civil right were being violated.

Mr. EDWARDS. But you made no investigation.

Mr. REYNOLDS. As I say, I felt that the civil rights laws would be implicated in that situation if I had complaints by white voters that were leveled against black voters for voter fraud, then I would be concerned. But if I have a complaint by black voters against other black voters or white voters against other white voters, that is a different situation in terms of whether the civil rights laws are implicated. There was no allegation that the complaints were being made because of race.

In fact, it was very much a controversy that got into the politics of the situation down there.

Mr. CONYERS. Well, it sounds like to me that you are using racial guidelines to determine what is a civil rights case.

Mr. REYNOLDS. I would hope so.

Mr. CONYERS. The upshot of all this, Mr. Reynolds, is that the lawyer that did all of this, that created all the ruckus that the chairman is referring to, is in hot water precisely because of this case. He may not ever become a Federal judge because of his conduct in prosecuting this alleged voter fraud in which everybody but one person was ultimately acquitted. There were a lot of old people put on buses and taken to other counties, and people who were in-

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timidated that had never voted before, and swore they would never go near a voting booth again if this is what results.

In other words, the whole thing was a first-class mess, and I am not able to attach any responsibility to you for it, but it came out of civil rights enforcement. It came out of people trying to vote in Alabama. It came out of some incredible misconduct on the part of the U.S. attorney there in prosecuting what you term a criminal matter. Now, surely after all that has been revealed in the press, at the Sessions hearings, you must have some view about how we might want to more effectively proceed in the future in these kinds of matters.

Mr. REYNOLDS. I haven't formulated any specific view on that, Congressman.

Mr. CONYERS. OK. Now the magnet school possibilities that you find so exciting, are you aware of Gramm-Rudman and the reductions that are coming about in terms of Federal aid to State and local education?

Mr. REYNOLDS. I think we are all acutely aware of the Gramm-Rudman legislation.

Mr. CONYERS. Well, if that is so it seems to me it may be pretty tough for magnet schools, whether it is a great idea or not, to even get off the ground in this kind of economic environment that we are working in. It seems to me that you would take that into consideration as you talk about them before the subcommittee this morning.

Mr. REYNOLDS. Well, I think that it has always been the case that the funding of desegregation decrees has been a State and local matter, not a Federal Government matter.

Mr. CONYERS. I see. OK, it is the States' problem. The cities' problem. Not ours, not yours, not mine.

Mr. REYNOLDS. Would you like the other half of my answer?

Mr. CONYERS. Yes, sir; I would.

Mr. REYNOLDS. Thank you.

Mr. CONYERS. Excuse me.

Mr. REYNOLDS. Thank you. It is indeed, as it has been demonstrated, it is indeed becoming apparent to more and more people who are involved in this desegregation planning that looks to magnet schools that you are not talking about costs that are significantly different than the costs you will be talking about by a mandatory transfer program. The local authorities that are dealing with desegregation are going to be able effectively and meaningfully to deal with that desegregation with essentially the same kind of funding obligation that they would have been under, for example—well, in any kind of a large-scale mandatory busing. So I think we are dealing here with a desegregation remedy that is very much from a cost standpoint equated with what we have always recognized as being an obligation from a funding standpoint of the State and local governments.

Mr. CONYERS. OK, now, can you or someone on your staff provide me with some basis for that argument, if you happen to have some research or somewhere the people say that that is the case?

Mr. REYNOLDS. I'll look.

[See p. 68.]

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Mr. CONYERS. Now, can you give me a list of magnet schools that have helped ameliorate the racial problem in the United States by their being introduced into a city or county or State so that we can check on this. I mean suppose you are right, and suppose in all my life that I have been trying to bring about racial integration in our school systems in America, I have overlooked the exciting possibility of magnet schools. Where would I go to find examples of them in operation?

Mr. REYNOLDS. You weren't alone, Congressman.

Prince Georges County would be a place you could go that is quite close.

Mr. CONYERS. Where at in Prince Georges County?

Mr. REYNOLDS. I don't understand the question.

Mr. CONYERS. What school?

Mr. REYNOLDS. Well, they have got magnet schools that are in place that are from all reports doing well out there in terms of a desegregation effort. I think that certainly you can get in touch with the county supervisor and find out that information.

Mr. CONYERS. Call them, and they will tell me where the magnet schools are. OK.

Mr. REYNOLDS. That would be a starting point.

Mr. CONYERS. You don't happen to have any in your files or could get any for me?

Mr. REYNOLDS. We weren't involved in the Prince Georges County case.

Mr. CONYERS. Well, I wasn't either.

Mr. REYNOLDS. Ector County is another place. Catto Parish——

Mr. CONYERS. Hector County?

Mr. REYNOLDS. Ector County in Texas.

Mr. CONYERS. Hector——

Mr. REYNOLDS. Ector, E-c-t-o-r, Ector County.

Mr. CONYERS. Oh, Ector County in Texas.

Mr. REYNOLDS. Caddo Parish down in Louisiana.

Mr. CONYERS. I'm sorry, I didn't hear that one.

Mr. REYNOLDS. Caddo Parish down in Louisiana.

Mr. CONYERS. Could you spell that for me?

Mr. REYNOLDS. C-a-d-d-o P-a-r-i-s-h down in Louisiana. I think that in Chicago there are magnet schools that are working well under that program. I don't have a list of all of them, those are some that I know are working well.

Mr. CONYERS. Do you know how many school districts there are in this country, sir?

Mr. REYNOLDS. No; I don't.

Mr. CONYERS. How many thousands?

Mr. REYNOLDS. A lot.

Mr. CONYERS. Yes, that is what I am thinking.

Mr. REYNOLDS. Well, maybe there are some educators, Mr. Reynolds, and education associations that would be able to help me appreciate the importance of magnet schools in terms of resolving the racial disparity problem. I'll suppose I'll have to look there to.

Now, isn't it true there are more schools that are predominantly black and more schools that are predominantly white right now than there were 10 years ago?

Mr. REYNOLDS. Boy, I have no idea.

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Mr. CONYERS. You don't.

Mr. REYNOLDS. I have no idea.

Mr. CONYERS. Well, if you knew the answer to that, would that lead you to either say that maybe if there are more schools that are of one particular racial predisposition, that we might not be make so much progress? Might you infer that?

Mr. REYNOLDS. Progress to——

Mr. CONYERS. In terms of racial distribution and elimination of racial discrimination and segregation in our school systems in America.

Mr. REYNOLDS. Well, I think that I would agree that if that were the case we wouldn't be making progress in racial distribution. I don't think that would signal in any way, shape, or form what the situation is with regard to eliminating racial discrimination in our school system.

Mr. CONYERS. You said, I think, that it doesn't matter what the complexion of the students in terms of elimination of racial discrimination?

Mr. REYNOLDS. I didn't say it didn't matter, I just said that I think that it is not—you can't, from the information that you have on predominantly one way schools conclude that that is the result of discrminatory activity on the part of the school authorities.

Mr. CONYERS. You can't?

Mr. REYNOLDS. It may be; it may not be. No; in fact, the courts have made a——

Mr. CONYERS. What about that 1954 *Brown* case in the Supreme Court that I thought said you could.

Mr. REYNOLDS. Well, the Court says that certainly where you have that situation that results by reason of the school authority's involvement in the racial assignments, and therefore it is de jure segregation, that then it is a discriminatory situation, but they also have made quite clear in the school cases that where you have circumstances that by reason of the demographics and where people live and having nothing to do with any kind of intentional discriminatory behavior by any of the school authorities, you wind up with some predominantly one-race schools; that that is not offense to the law, that is not something——

Mr. CONYERS. In other words, you have got to find out why they are all black and all white before we leap to the conclusion that we may not be making such hot racial progress.

Mr. REYNOLDS. That is correct.

Mr. CONYERS. I see. Have you done that?

Mr. REYNOLDS. Well, I was not aware of your major premise that there are more today than there were then. I know that we have certainly a large number of school districts that are under court order and have been under court order that we are monitoring. We have other school districts that we are looking at in terms of our enforcement activity, and there are others that are in litigation. I don't know—beyond that, I am not sure if there are school districts that aren't in that particular category, and we have received no complaint about them, then I wouldn't have any information as to that school district.

Mr. EDWARDS. I believe that we have a commitment that we would quit pretty soon.

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Mr. CONYERS. Well, I have got just one set of questions back on affirmative action that I would like to close off with.

Mr. EDWARDS. Sure; go ahead, Mr. Conyers.

Mr. CONYERS. Are you aware that the Lawyers' Committee for Civil Rights, when they found out about this draft proposal to change the Executive order back in the summer of 1985, said that

> If the draft order is signed, it would be the most extreme action the administration has yet taken in the civil rights area. It would effectively limit the executive order to rare cases in which direct proof of intentional discrimination is available. The EEOC and the Justice Department combined file only a couple hundred fair employment lawsuits a year out of nearly 10,000 new cases filed under the fair employment laws by citizens each year. The Labor Department's monitoring of thousands of government contractors each year under the present executive order has been the Government's main weapon in combating job discrimination. Dismantling it would be a great comfort to bigots everywhere.

Do you agree with that?

Mr. REYNOLDS. No.

Mr. CONYERS. Why not?

Mr. REYNOLDS. Well, I think that the Executive order, as it is operating now, is one that works regrettably to discriminate against those that it is designed to benefit; that minorities, women, and those who are subject to these kinds of goals and timetables are those that have a limited number of opportunities available to them to compete against those people that are of the same race and gender, and the other 80 percent of the slots are held open to those that don't fall into those categories. I think that the fact that you are requiring those who do business with the Government to begin discrimination by differentiating among people based on race and gender and national origin is discriminatory in the worst sense.

What it does is it compromises the principle of nondiscrimination. It leads us to an equal result; a society of proportional representation is the outcome of it, and I think that would be probably one of the most disastrous things that we could do to the minority communities in this country today.

Mr. CONYERS. Well, I am glad to hear you say that.

You know the civil rights community disagrees with you totally?

Mr. REYNOLDS. Well, Congressman, it has been my——

Mr. CONYERS. I said, do you know that?

Mr. REYNOLDS. Well, I don't believe the civil rights community is nearly as monolithic as you would like to suggest. I think that there are people in the civil rights community that disagree. I think there a large number of people that agree. I think the debate is raging among those people, as it is raging among other people in this country, and I resist the notion that we can suggest that there is a monolithic group of minorities out there who all think in one way and walk in lock step with one point of view.

Mr. CONYERS. I am not talking about minorities being monolithic. I am talking about the civil rights leadership community like, for example, the oldest civil rights organization in the United States, the National Association for the Advancement of Colored People.

Mr. REYNOLDS. I think that he——

Mr. CONYERS. Do you realize that they disagree with you?

Mr. REYNOLDS. I think the civil rights leadership community certainly, by and large, disagrees.

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Mr. CONYERS. Well, thank you, that saves us a lot of time.

Now, do you know what the National Association of Manufacturers, the people that you—I don't know who you are speaking for besides yourself, but here are the businesses, the companies witnesses testifying on behalf of the NAM about affirmative action. I am going to just read a sentence:

> Voluntary goals set by corporations for work force participation should not be viewed as a road in equal opportunity objectives. These goals are merely a recognition that in grained prejudices remain in our society. Assuring equal opportunity, at least for the next few years to come, means we must be ever vigilant in facing these prejudices and overcoming them.

This was part of the testimony of the director of equal opportunity from Monsanto testifying on behalf of the National Association of Manufacturers before this subcommittee last year. They said, "We don't like it, Congress, but we can live with it because we understand you are redressing a historical problem."

Do you have any problem with their point of view?

Mr. REYNOLDS. Well, I think that certainly I know that individual well, and I have discussed this with him on numerous occasions. I think that the NAM point of view is as diverse as are the minority point of view and the chamber of commerce point of view and the whole rest of the business community, and I think that it is fair to say that there are those on both sides of this issue, some who feel the way you do, that the preferential program is one that ought to stay in place, and some that feel the way I do, which says that the preferential program is discriminatory and ought to be eliminated.

Mr. CONYERS. Well, now who in the civil rights community disagrees with the position of the NAACP and the Leadership Conference on Civil Rights and the Congressional Black Caucus? I have been working in this so-called minority community all my life. Name me somebody.

Mr. REYNOLDS. I guess the easiest answer is to point you to the most recent polls in this area that have showed that 77 percent of the minority community on this issue disagree with the view of the leadership of the civil rights community on this issue. I think that actually the latest poll was 77 percent of the leadership felt that the preferences were good, and 77 percent of the minority community, not included in the leadership, felt that the position of nonpreference was a correct one.

Mr. CONYERS. Well, this comes as a great shock to my leadership. Would you refer me to this poll, which my staff has failed utterly to bring this to my attention.

Mr. REYNOLDS. We will make that available to you, absolutely.

[See p. 73.]

Mr. EDWARDS. Thank you very much, Mr. Reynolds.

Mr. REYNOLDS. Thank you, Mr. Chairman.

Mr. EDWARDS. I appreciate your testimony today.

[Whereupon, at 12:20 p.m., the subcommittee adjourned subject to the call of the chair.]

[Additional material follows:]

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U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

12 MAY 1986

Honorable Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights
U.S. House of Representatives
Annex I, A806
Washington, D.C 20515

Dear Mr. Chairman:

I indicated during the Civil Rights Division Authorization Hearing before the Subcommittee on April 17, 1986 that I would provide additional information in response to the questions of Mr. Convers and the Subcommittee's counsel Mr. Ishimaru.

On pages 68 and 69 of the transcript, Mr. Ishimaru asks about the number of cases filed under Section 2 and Section 5 of the Voting Rights Act and where these cases were filed. He inquires specifically about whether any Section 2 cases were filed in Mississippi, Alabama, or Georgia.

The following cases are those in which the Civil Rights Division initially participated under Section 2 of the Voting Rights Act in fiscal year 1985. We were the plaintiff in each case.

Case Name	Date Filed	State
United States v. Dorchester County	12-5-84	Maryland
United States v. City of Cambridge	12-5-84	Maryland
United States v. Board of Education of Wilkes County	1-10-85	Georgia
United States v. Chaves County	1-10-85	New Mexico
United States v. City of Roswell ISD */	3-12-85	New Mexico
United States v. Darlington County	8-21-85	South Carolina

*/ Severed by the court from United States v. Chaves County on March 12, 1985.

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The following cases are those in which the Civil Rights Division initially participated as a party under Section 5 of the Voting Rights Act in fiscal year 1985. In each case we were the plaintiff. We also participated in one Section 5 case */ as amicus curiae.

Case Name	Date Filed	State
United States v. City of Barnwell	10-22-84	South Carolina
United States v. Orangeburg Co. Council	11-21-84	South Carolina
United States v. State of Texas	7-19-85	Texas
United States v. Houston County	8-21-85	Alabama

On page 73 of the transcript Mr. Convers questions my "excitement" about the magnet school program in light of Gramm-Rudman reductions in Federal aid to state and local education. First, it should be noted that I am not the only one who finds magnet schools "exciting." In recent years, magnet schools and/or programs have been included in a number of new and revised desegregation plans where the government is not a party. For example, in Prince Georges County, Maryland, after substantial opposition from both white and black parents to a busing proposal, the school system and private plaintiffs agreed to a plan which relies heavily on magnet schools. Other school districts where magnet schools play a large role in desegregation plans and where we are not a party include San Diego, California; Philadelphia, Pennsylvania; and Milwaukee, Wisconsin.

The Justice Department is involved in numerous cases where school districts have agreed to implement magnet schools or programs as the primary desegregation technique. Some of these districts are: Ector County Independent School District, Texas; Marion County School District, Florida; City of Huntsville School District, Alabama; Caddo Parish School District, Louisiana; Lima School District, Ohio; Bakersfield School District, California; Phoenix Union High School District Number 210, Arizona; Hattiesburg School District, Mississippi; City of Yonkers School District, New York. In fact, in two of our cases the federal

*/ Lerov v. City of Houston, Texas, in which our brief was filed on March 29, 1985.

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district court was asked to consider a magnet school plan versus a mandatory student assignment (busing) plan. In each case -- United States v. Ector County Independent School District, Texas and United States and Pittman, et al. v. State of Mississippi and Hattiesburg Municipal Separate School District -- the court, following an evidentiary hearing, approved the magnet plan as the superior alternative.

This trend is hardly surprising. Many parents view magnet schools as offering their children better educational opportunities. School officials also view magnet schools as allowing them to better serve the educational needs of students and their parents, and as a desegregation technique which helps to stabilize student enrollment. In the Hattiesburg case, the court noted in its opinion approving the magnet plan that: (1) the "probability of success of Hattiesburg's plan is greatly enhanced by the obvious support of and commitment to the plan by the community (black and white) and school officials;" and (2) that the magnet plan proposed for Hattiesburg would not cause white flight to the same extent as expected under the proposed mandatory assignment plan. Finally, the Justice Department is "excited" about magnet schools because we believe that it is a technique which works and which has the strong support of parents, students and school officials. The excitement about magnet schools is best exemplified by the many situations in which parents literally camped out over night to establish their place in line for enrolling their children in magnets, and the fact that for many magnet schools the number of applications received is greater than the space available and the schools must maintain waiting lists.

Mr. Conyers also commented that "it may be pretty tough for magnet schools . . . to get off the ground in this kind of economic environment [cut in Federal funds due to Gramm-Rudman]" and his questions imply that the Justice Department needs to further support the position that the costs of magnet schools should be an obligation of the State and local government.

The Department's position is that the costs of implementing a remedy to correct a constitutional violation must be borne by those who created and maintained the violation -- usually the school district and the state. In Brown v. Board of Education of Topeka, et al., 349 U.S. 2954 (Brown II), the United States Supreme Court stated, "[F]ull implementation of these constitutional principles may require solution of varied

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local school problems. School authorities have the primary responsibility for educating, assessing, and solving these problems. . . . " In Adams v. United States, 620 F.2d 1277 (8th Cir. 1980), the court stated that "[T]he Board of Education is to be given the principal responsibility for developing and implementing a comprehensive plan to integrate the school system." In Adams, the court also stated (footnote 28) that "[T]he costs of the plan shall be apportioned among the defendants (school officials) as determined by the district court."

We are not aware of any case where a local school board liable for operating a de jure segregated school system has challenged its basic obligation to pay the costs of implementing an appropriate constitutional remedy. In fact, federal district courts have consistently held that local school officials cannot use the costs of appropriate remedial measures as a defense to meeting their constitutional obligation to desegregate public schools.

With respect to the costs of magnet programs versus the costs of a busing plan, we have not contemplated any comparative studies. We believe, however, that busing has not worked as an effective desegregation technique. In fact, if one were to measure the costs of a busing plan, it would not be appropriate just to determine the costs of new buses, fuel, drivers, maintenance of the buses, etc. You would also have to measure such things as what it means to a school district when large numbers of students leave the school district because of massive mandatory busing and the impact of the loss of enrollment on the financial stability of the school system. Frequently, the loss of student enrollment results in operating schools under capacity, closing schools, laying off teachers and staff, etc. It is not clear how one would measure these "costs." Thus, we advocate magnet schools because they have proven to be a successful technique for correcting constitutional violations.

We are aware that magnet programs may require additional funding. The evidence shows that many parents and school officials want magnet programs and their widespread use clearly indicates that funding has not been a bar to implementing such programs. It should also be noted that some school programs have tapped private sources -- e.g., having local businesses adopt and support the public schools.

In conclusion, I am not willing to speculate as to the impact Gramm-Rudman may have on desegregation or the use of a particular approach in school districts. In my view, school districts which are required to implement remedial plans must do

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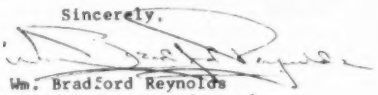
so because failure to do so means that the constitutional rights of minority students would be abrogated. School districts must use innovative and creative approaches to raising necessary funds to implement constitutionally mandated desegregation remedies. Any school district which believes that financial considerations should be taken into account with respect to its obligation to develop and implement a plan has every right to bring its concerns to the attention of the appropriate federal district court. The court can then consider the specific facts of the situation, in light of the proper constitutional standards.

Finally, on page 85 of the transcript Mr. Conyers indicates he is unfamiliar with a recent poll of the minority community and the views of the civil rights leadership. I am enclosing a copy of this poll, entitled "Who Speaks for Black America" by Linda S. Lichten, taken from the August/September 1985 edition of Public Opinion.

If there is any way that I can be of further assistance to the Subcommittee, please do not hesitate to contact me.

Sincerely,



Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

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by Linda S. Lichter

Who Speaks for Black America?

Civil rights leaders and the Reagan administration have been trading charges of racism lately. Clarence Pendleton, chairman of the U.S. Civil Rights Commission, has labeled traditional civil rights advocates as "media-designated black leaders" who advocate a "new racism" by promoting preferential treatment for minorities. NAACP chairman of the board William F. Gibson has called Ronald Reagan "basically a reactionary and racist." Meanwhile, black leaders such as Jesse Jackson and representatives of the Urban League and the Southern Christian Leadership Conference have accused Reagan and his administration of insensitivity toward the plight of black Americans. Reverend Jackson has described the present political climate as one of "anti-black mania and a search for scapegoats."

Underlying this debate are some critical assumptions about race relations in this country. Spokesmen for both camps sketch their readings of black America's pulse, while the media eagerly follow the battle among elites. Yet, in the midst of this controversy, little hard evidence exists on how the average black American feels about the problems that have set the leaders against one another, nor do we have any detailed knowledge of black leaders' positions on issues that affect not only blacks, but all Americans.

To help fill in these gaps, we conducted surveys among black leaders and a national sample of 600 blacks. First, we determined which organizations most often speak for black America. We did this by tabulating citations of the civil rights groups and political organizations that received the most coverage on issues related to race in the *New York Times*, *Washington Post*, *Time*, and *Newsweek* in 1984. According to our analysis, those groups receiving the most national media coverage were the NAACP, the Urban League, the Southern Christian Leadership Conference, Operation PUSH, the National Conference of Black Mayors, and the Congressional Black Caucus. We then compiled a list of the individuals who exercise substantial influence on each organization's policies. For the four civil rights groups, this included all those in executive positions as well as members of their boards of directors and trustees. For the two groups of elected officials, we compiled lists of their total membership. From these, we polled a stratified random sample of leaders on key social, political, and economic issues.[1]

The interviews were conducted by telephone during May-July 1985. Most of the questions we used were adopted from surveys previously executed by organizations such as Gallup, the National Opinion Research Center, the Associated Press, the *New York Times*, and CBS News. A total of 105 leaders from all six groups completed our survey.[2] Only 6 percent of the leaders we contacted declined to participate. We then asked the same questions of a nationwide random sample of 600 black Americans, drawn by Survey Sampling, Inc. of Westport, Connecticut. This survey has a 4 percent margin of error. The interviews were conducted by Lawrence Johnson and Associates of Washington, D.C. and Metro Research Services, Inc. of Fairfax, Virginia.

The surveys revealed a surprising divergence between black leaders and the average black American on a broad spectrum of concerns, including some at the very heart of race relations. In fact, the widest gulf between black leaders and black America centered on some explosive social issues with racial overtones. On the hotly debated subject of affirmative action, 77 percent of the leaders agreed that minorities should be given preferential treatment in jobs and colleges, while the exact same proportion of black Americans—77 percent—rejected the notion that race should be a major criterion for selection. Busing schoolchildren also produced a significant split: About two-thirds of black leaders favored busing, while a majority of other blacks opposed it.

An even greater schism emerged on the volatile

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issue of American business investments in South Africa. About three-quarters of all blacks agreed that U.S. corporations should remain there and use their influence to break the barriers of apartheid, while a majority of leaders would force corporations to pull out of South Africa. It should be noted that these interviews were completed before the Pretoria government imposed its recent state of emergency, but after protests and arrests at the South African embassy in Washington had become a staple of media coverage.

The Current Climate

Other issues concerned with race produced a mixture of consensus and conflict between leaders and the national sample. Most black people were optimistic about the general condition of black America, while black leaders displayed a marked pessimism. Two-thirds of our national sample said black people are currently making progress, while almost as many leaders maintained that blacks are going backwards. On the more specific concern of job discrimination, the more positive assessments of the average black person came through again. A majority said they had never experienced racial discrimination in applying for a job, though three-quarters of the leaders felt they had encountered prejudice. This discrepancy has at least two possible explanations: Black people may be more likely to confront discrimination at the top levels of society; this would explain why successful black leaders were more likely to experience prejudice. Alternatively, leaders and ordinary blacks may simply have different perceptions of what constitutes racial discrimination.

Table 1
Attitudes of Blacks

	Leaders	National
Most blacks today making progress or going backwards?		
Making progress	39%	66%
Going backwards	61	34
Have you, personally, ever experienced racial discrimination against blacks in terms of applying for a job, or not?		
Have experienced racial discrimination	74	40
Have not	26	60
Do you approve or disapprove of marriage between blacks and whites?		
Approve	91	77
Disapprove	9	23
Some people say that to make up for past discrimination, members of minority groups should be given preferential treatment in getting jobs and places in college. Others say that ability, as determined by test scores, should be the main consideration. Which point of view comes closer to how you feel on this matter?		
Minorities should be given preference	77	23
Ability should be the main consideration	23	77
On the whole, do you think that most white people want to see blacks get a better break, want to keep blacks down, or don't you think they care either way?		
Get better break	26	30
Keep blacks down	28	24
Don't care	46	46
Would you say the Democratic party is now more interested, as interested, or less interested in helping to solve the problems of black Americans as compared with four years ago?		
More interested	10	46
As interested	31	26
Less interested	59	28
Would you say the Republican party is now more interested, as interested, or less interested in helping to solve the problems of black Americans as compared with four years ago?		
More interested	9	17
As interested	17	23
Less interested	74	58
Do you approve or disapprove of the way Ronald Reagan is handling his job as president?		
Approve	13	30
Disapprove	87	70
Recently there has been a great deal of discussion about racial discrimination in South Africa. Some people say that American corporations should not be allowed to invest money there and that corporations already having investments there should be forced to sell them. Other people say that American corporations should be allowed to remain in South Africa so that they may use their influence to help promote equality for black people. Which of these two positions comes closer to your own?		
Corporations should not invest in South Africa	59	26
Corporations should use their presence there to help black people	41	74
If a young black person works hard enough, do you think he or she can usually get ahead in this country, in spite of prejudice and discrimination, or that he or she doesn't have much of a chance no matter how hard he or she works?		
Can usually get ahead	78	82
Not much chance	22	18

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The two groups were about equally optimistic in agreeing that a young black person can get ahead in our society if he or she works hard enough, despite discrimination. Both groups also shared the same vision of white attitudes toward black progress: Just under half of each group thought whites have no strong feelings for or against black progress. Roughly a quarter said whites want to keep blacks down, and about the same proportion thought whites want to see blacks get a better break. In addition, majorities of both groups approved of racial intermarriage, although black leaders expressed greater support.

In view of the leaders' greater tolerance of intermarriage, it was surprising to find that they were more race conscious on matters of community control. Although majorities of both groups said that race was not important on these questions, black leaders were four times more likely to assert that only blacks should control schools and stores in black neighborhoods.

Social and Economic Matters

A varied collection of social, political, and economic issues produced more divergence than consensus between our two samples. In general, the leaders were more liberal on social issues. A majority of leaders, for example, would allow homosexuals to teach in public schools, a tolerance not shared by most black Americans. In addition, blacks were three times as likely as black leaders to favor a ban on all abortions. These two groups also expressed markedly different sympathies on prayer in the public schools: 83 percent of all blacks would allow school children to pray, but a

	Leaders	National
Suppose there is a public school that is attended mostly by black children. Do you think the principal should be a black person, a white person, or that race should not make any difference?		
Black	35	8
White	0	1
No difference	56	91
How about stores in black neighborhoods? Do you think they should be owned by blacks, whites, or that race should not make any difference?		
Owned by blacks	44	9
Whites	0	1
No difference	56	90

	Agree/Favor		Disagree/Oppose	
	Leaders	National	Leaders	National
A woman with young children should not work outside the home unless it is financially necessary	60%	70%	40%	30%
Without the help they have gotten from the West, third world nations would be even worse off than they are now	83	71	17	29
Big corporations should be taken out of private ownership and run in the public's interest	22	50	78	50
The American private enterprise system is generally fair to working people	63	50	37	50
The Equal Rights Amendment	91	83	9	17
Prayer in the public schools	40	83	60	17
The death penalty for murder	33	55	67	45
Allowing homosexuals to teach in the public schools	59	40	41	60
Ban on all abortions	14	43	86	57
Harsher sentences for those convicted of crimes	65	84	35	16
Busing of black and white school children from one school district to another	68	47	32	53

National Sample Only

	National
Are you a member of any civil rights organization?	
Yes	14%
No	86
Do you think that the black leaders you see on TV newscasts and read about in the newspapers are generally speaking for the majority of black people, or do you think they usually speak for only a minority of black people?	
Speak for majority	52
Speak for minority	48
Do you think it is appropriate or inappropriate for leaders of black groups in the United States to play a role in United States foreign policy?	
Appropriate	83
Inappropriate	17
(Of those who answered "appropriate" to above.) Do you think these black leaders should work through the United States State Department or talk directly to foreign leaders?	
State Department	65
Talk directly to foreign leaders	35

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majority of leaders opposed putting religion in the classroom. The split on this issue is somewhat surprising, since majorities among both the leaders and other blacks are regular churchgoers. More than half of each group attends weekly religious services, and more than three-quarters go to services at least once a month.

On issues of crime and punishment, the average black American took the tougher line. A majority favored the death penalty for murder, while two-thirds of leaders rejected capital punishment. Likewise, the national sample expressed greater support for harsher sentences for convicted criminals. The two groups agreed, however, on two key gender issues—ERA and working mothers—although sentiments were liberal on the former issue and conservative on the latter. Large majorities of both groups favored passage of the Equal Rights Amendment, but both groups also agreed that women with small children should not work outside the home unless it is financially necessary.

The strongly liberal leanings of black leaders on social issues were moderated somewhat on economic questions, while the national sample was sharply split over the free enterprise system. Fully half of black America would take corporations out of private ownership, more than double the proportion among the leadership. Likewise, almost two-thirds of the leaders agreed that private enterprise is generally fair to working people, while the national sample again split right down the middle. The stronger free market leanings of black leaders may reflect the substantially higher incomes they enjoy compared to our national sample. Fifty-nine percent of the leaders reported 1984 household incomes of over $50,000, compared to only 3 percent of all black Americans. More than two-thirds of the national sample said their households received less than $20,000 per year, while only 5 percent of leaders were at this low end of the scale.

The relative affluence of black leaders is undoubtedly related to their impressive educational achievements. Fifty-nine percent said they had graduate degrees, the exact proportion earning over $50,000 a year. Overall, only one black American in seven reported finishing college, compared to an overwhelming 80 percent of the leaders.

Political Inclinations

The political arena has, for the past three decades, served as the most important forum for voicing black America's concerns. It is here that black leadership emerged and coalesced. Yet, this is the area that highlighted some of the most interesting differences between black leaders and their constituents. For example, in describing themselves politically, 68 percent of the leaders called themselves liberals, compared to only 27 percent of all black people. The national sample was also three times as likely as the leaders to call themselves conservative, and a majority said they were middle-of-the-road, compared to only one in four leaders.

These general political differences were also reflected in divergent views of the political parties. We asked both groups to tell us whether they thought the Democratic and Republican parties were more interested, as interested, or less interested in solving the problems of black Americans compared with four years ago. In general, black leaders were more alienated from both parties. Although their skepticism toward Republicans might be expected, they also perceived an increasing distance between themselves and the Democratic party. While three-quarters of the leaders called the Republican party less interested, over half also said the Democrats were less interested in solving the problems of black America than they had been four years ago. According to our survey, the Republican party still has a long way to go to prove itself with black people, but they are more likely than their leaders to compliment the efforts of Republicans. For example, they were about twice as likely as the leaders to say the Republican party was becoming more interested in black concerns.

Based on the recent presidential election, where Ronald Reagan received only 10 percent of black America's votes, he might expect only minimal support from this group. Not surprisingly, majorities of both leaders and our national sample disapproved of the way Mr. Reagan is handling his job. However, 30 percent of black Americans approved of the president's performance, more than twice the proportion of leaders giving their approval. In the latest Gallup poll conducted August 13-15, 1985, 31 percent of blacks nationwide approved of the job Ronald Reagan was doing.

In further probing the question of leadership, we asked black Americans if they thought it was appropriate for black leaders to play a role in U.S. foreign policy. A large majority favored the participation of their leaders in foreign negotiations, but about two-thirds said black leaders should work through the State Department rather than talking directly to foreign leaders. We should note that this is a general question and should not necessarily be interpreted as criticism of any particular incident in which black leaders dealt directly with foreign governments. For example, it is doubtful that black America would fault the recent successful efforts of Reverend Jesse Jackson to free a U.S. serviceman held captive in Syria.

Black Americans were sharply divided about how well black leaders represent their interests. Only about half of all blacks said that the leaders they see on television and read about in the newspapers represent a majority of black people. The other half of our national sample said these leaders speak for only a minority of blacks. This split may be related to the small proportion of blacks, 14 percent, who said they belonged to any civil rights organization. Many blacks, therefore, may not be in close touch with the policies of some black leaders and civil rights groups. This result highlights a

(Continued on page 58)

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Where East Meets West

Even though New York and Los Angeles are very different, their residents support similar remedies to deter crime. People interviewed in both cities were more willing than not to feel that *all* solutions offered to them by the pollsters would help a lot (see table 1). Blacks and Hispanics were, with one exception, even more convinced of this than were whites, whose convictions were quite strong. The death penalty offered the only contrast, and on that proposal fewer blacks than either whites or Hispanics believed it would help a lot.

Hiring more police as a solution to L.A.'s crime problem was embraced by fewer people than all but one of the other remedies. This even though it had been a major campaign issue in the Los Angeles mayoral race and had been the subject of a great deal of media attention. (Both candidates favored hiring more police.) Fifty-nine percent of New Yorkers endorsed a similar proposition —"putting more police on foot patrol and fewer in squad cars"—that was far more appropriate to dense New York than to sprawling L.A.

Only on the death penalty did Los Angelenos and New Yorkers hold markedly different views: 56 percent of the registered voters in Los Angeles felt that the death penalty would do a lot to reduce crime in their city, while slightly less than half of the residents polled in New York City, 47 percent, felt that way.

The concern about crime expressed by residents of the two major metropolitan cities, though serious, falls far short of driving them to abandon these urban centers. In fact, just the opposite seems to be true. When people were asked if they would prefer to be living in the city where they now live, or would prefer to live elsewhere, more than half of the residents polled in each city said they wanted to remain where they were, crime or no crime.

[1] The CBS News/*New York Times* telephone surveys conducted in New York City between April 27 and May 3, 1985 had 1,387 respondents. KCBS-TV of Los Angeles conducted its telephone survey with 978 registered voters between February 14 and 18, 1985. The *New York Times* survey of New York City interviewed 1,329 residents by telephone between January 9 and 10 of this year. The margin of error for the two New York City surveys was plus or minus 3 percentage points, and for the Los Angeles poll, plus or minus 4 percentage points based on the total sample. The margin of error is slightly large for any subgroups.

To ensure that comparisons between registered voters in Los Angeles and all residents in New York City were comparable, the analyses of the two New York City polls were also run for registered voters only. The results indicate that in no instance was there a difference between registered voters and all residents that amounted to more than 1 percent.

Lichter

(Continued from page 44)

dilemma that goes to the heart of the role of political leadership. Some may argue that the essence of leadership often involves adopting policies and ideas that may at times contradict the wishes of those they are intended to benefit. Others may argue that leaders should represent the views of their constituents, even if they run counter to their own.

In summary, we found considerable distance on many controversial issues between the average black person and the leaders of those groups the media most often recognize as the voice of black America. Yet, in assessing the role of America's black leadership, there are several important factors to consider that may slip through the cracks of survey questions. Many of the black leaders that we surveyed played a crucial role in America's quest to rid itself of long-entrenched institutional racism. Some of these leaders risked their lives in fighting to secure the political rights that others may now take for granted. If three decades of civil rights struggles have produced some schisms among whites, blacks, and their leaders, they have also fostered a principle deserving of unqualified and universal acceptance—that the concerns of black America should be America's concerns.

I am deeply grateful to S. Robert Lichter and William C. Adams for their generous assistance with this research.

[2] Two whites were included in our sample. They were interviewed because they occupy positions of influence in these organizations.

Schneider

(Continued from page 11)

dential sources in order to provide evidence in a criminal trial, and court-imposed fines in cases of biased or inaccurate stories. While professional journalists no doubt find such responses shocking, they are more likely based on common sense than on antipathy toward the press. In fact, none of these restrictions is endorsed by a sizable majority. And in cases involving direct censorship by government—preventing the media from publishing or broadcasting stories, barring the press from foreign military operations—the public tends to side with the press.

Thus, many criticisms of the press boil down to differences between professional and lay perspectives. Where the public feels competent to judge, it expresses a strong measure of confidence in the press. In areas where the public does not feel fully competent to judge, a certain amount of skepticism is natural, and healthy. Do we really want people to believe everything they read in the papers?

The Press Passes

We can find groups with noticeably higher levels of disgruntlement. Surprisingly, conservatives are not among them. The *Los Angeles Times* poll shows very little difference between liberals and conservatives in their evaluations of the media. Sixty percent of liberals and 63 percent of conservatives gave their own newspaper a very good rating. Twenty-seven percent of liberals and 26 percent of conservatives gave a very good rating to the news media as a whole. Conservatives described the news media as liberal rather than conservative by a margin of 22 percentage points; so did liberals, by a margin of 19 points. Ideology seems to make little difference in people's views of the media.

The ASNE study identified two groups that had problems with media credibility. One was the "less well informed and suspicious." These were people with low education and incomes, limited media usage, and little interest in the news. They tended to be suspicious of the press and resentful of its power and influence.

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